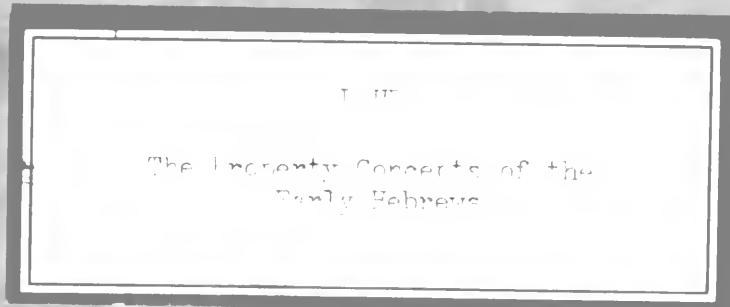


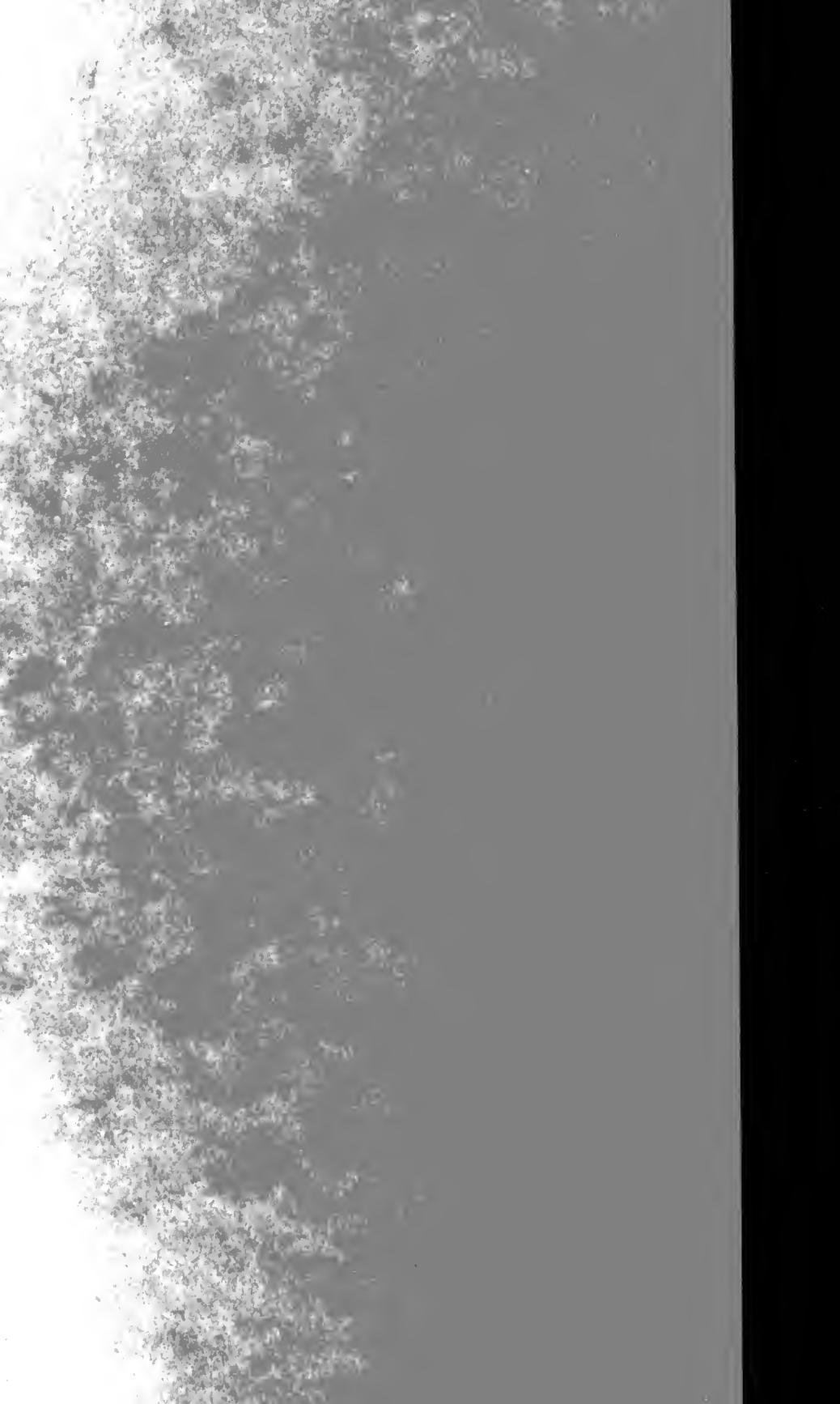
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EARLY HEBREWS

BY

MARTIN JOHN LAURE

University of Texas

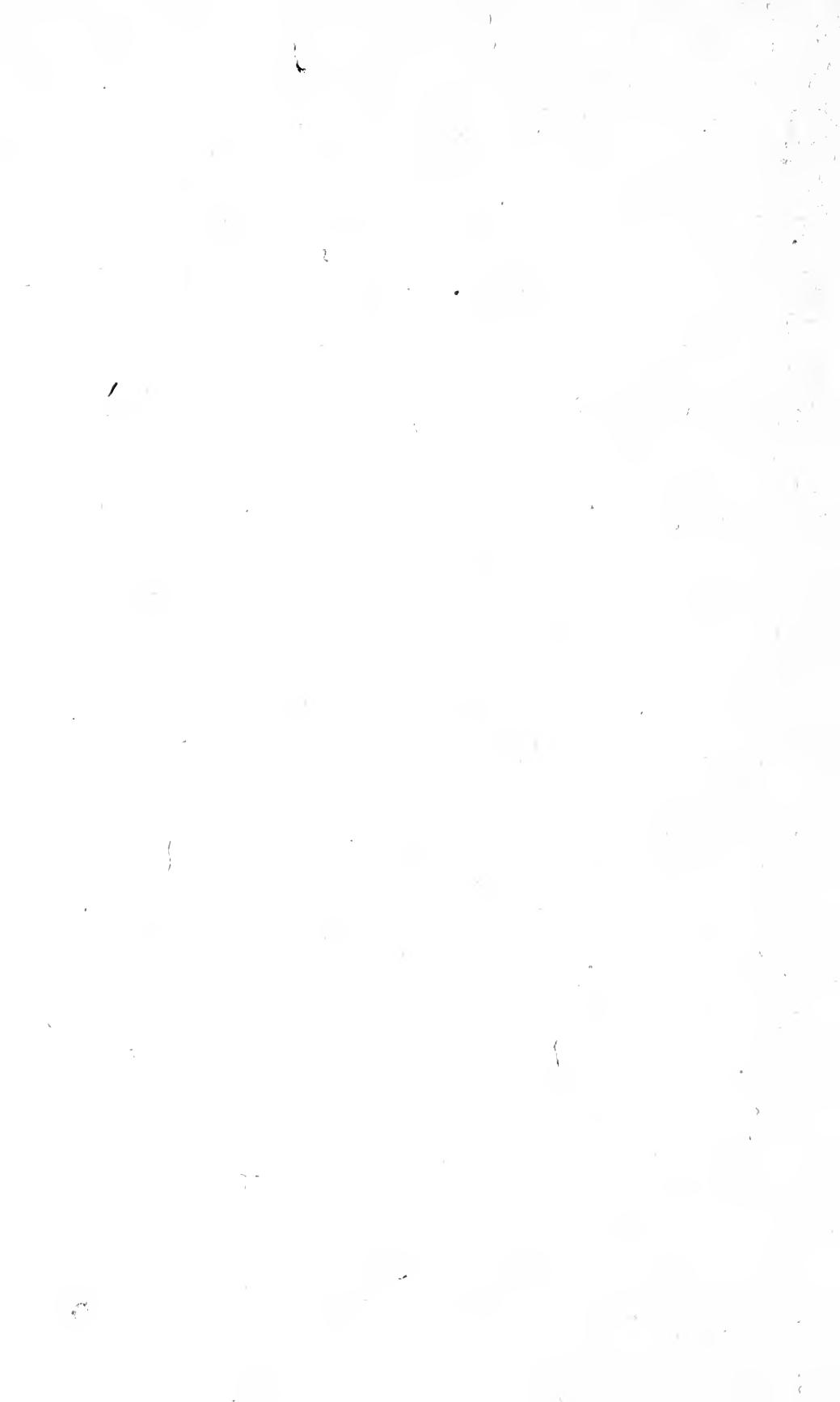
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# STUDIES IN SOCIOLOGY ECONOMICS, POLITICS AND HISTORY

PROFESSOR ISAAC ALTHAUS LOOS, LL.D., EDITOR

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## THE PROPERTY CONCEPTS OF THE EARLY HEBREWS

BY

MARTIN JOHN LAURE

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PUBLISHED BY THE UNIVERSITY, IOWA CITY

# THE HISTORICAL DEVELOPMENT OF ISRAEL'S WRITTEN LAW \*

Covenant at Sinai	M O S E S Traditions Customs Precedents	About 1200 B. C.
	J's Decalogue Ex. 34:10-26	
C Code	E's "Judgments"   E's "Words" Ex. 21:1-22:17   Ex. 20; 22:18-23:19	800 B. C.
D Code	Original Deuteronomistic code: Dt. 12-26; 28 Later Deuteronomistic code: Dt. 4-11; 27 Supplemental (D's) additions	700 B. C. 621 B. C. Josiah's reformation
Ezekiel's code	40-43   Holiness code   Priestly teaching Lev. 17-26   Lev. 1-3; 5-7; 11-15; Num. 5; 6; 15; 19:14-22	600 B. C.
P Code	Priestly code proper Histories, precedents, and laws	500 B. C.
	Supplements to the P codes Precedents and laws	400 B. C. Adoption of new law book of Moses
	Oral or traditional law	300 B. C. Completion of canon of law
	Mishna or written version of the oral law	100 A. D.
	Gemara: { Palestinian Talmud Babylonian Talmud	400-600 A. D.

\* After Kent, *The message of Israel's lawgivers*, Tabular frontispiece.

# CHAPTER I

## INTRODUCTION

Curious and interesting is the fact that the translators who gave us the English Authorized Version of the Bible did not find occasion to use the term "property" in the rendering of any word occurring in the Hebrew Scriptures. Scarcely less significant is it that notwithstanding the flood of critical literature upon the Hebrew Scriptures, one looks in vain for a treatise definitely dealing with the property notions among this ancient people. No article under the heading "Property" is found in any of the standard dictionaries or encyclopedias of the Bible. Nor is there, so far as the writer has been able to learn, a single work upon this subject in any of the modern languages. The enormous critical activity expended upon the Old Testament has been confined almost entirely within historical and literary lines, treating the facts of the Hebrews' social life and economic conditions more as an incident than as a fundamental factor in the development of their great religious system.<sup>1</sup>

Is it, then, that the ideas of property are wholly foreign to the Hebrews? The slightest acquaintance with the prophetic literature at once prevents such a conclusion. This literature is absolutely unique, and in no respect more so than with reference to the property notions there set forth.<sup>2</sup> Furthermore, it is well known that the outstanding historical characteristic of the Hebrew race, second in importance only to their religious life, is their "keen appreciation of property."<sup>3</sup>

What is the reason for this dearth of material? "The Israelites possessed no developed theory or system of laws in regard to the possession of property."<sup>4</sup> This is undoubtedly one of the best answers that can be given to the question, especially because it

<sup>1</sup> *Popular and Critical Bible Encyclopedia*, p. 861. *S. v.* "Inheritance."

<sup>2</sup> Compare the interest of the Hebrew prophets in "the poor and needy" with the sentiments expressed in Plato's *Republic* and Aristotle's *Politics*.

<sup>3</sup> McCurdy, *History, prophecy, and the monuments*, Vol. 2, p. 208.

<sup>4</sup> Kent, *The messages of Israel's lawgivers*, pp. 152-153.

indicates that "while they continued in the land of Palestine, economic and social conditions among the Israelites were exceedingly simple."<sup>5</sup> But if we shift the emphasis from the theory itself to its development, we see that it is not the absence of property notions that accounts for the lack of interest in this field, but the condition of plasticity or flux in which we find these concepts. In the inquiry, however, into the genesis of property notions, these transitional changes which precede the final crystallization of a developed theory, are precisely what the student must look for. Therefore; this field ought to yield as rich a harvest as any other, presenting as it does the embryonic stages in the evolution of the concepts of property.

Probably the most effective hindrance of a truly scientific interest in this line of inquiry is to be sought in the overwhelmingly theological and ecclesiastical coloring of everything connected with the Scriptures, and the strong bias with which investigations have been carried on.<sup>6</sup> Still, while this has been going on and traditional authority has suffered, the inherent scientific value and the intrinsic merits of the Hebrew records have been revealed.<sup>7</sup> This is evident in the recent interest shown in the study of Hebrew history in its sociological aspect, where we are somewhat more fortunate in regard to available material than in the matter of their economy.

The chief source of information in regard to the property concepts of the Hebrews is the Hebrew Scriptures. Such monuments as the Mesha Stone, dealing with Hebrew life in its formative period, are valuable. Assyriology and Egyptology, in such material as the Code of Hammurabi and the Tel-el-Amarna letters, throw light upon the social life in the ancient civilizations, but afford less direct evidence on the actual development of the property notions of the early Hebrews, and carry us back to a

<sup>5</sup> *Ibid.*

<sup>6</sup> It would be difficult to cull a more striking illustration of this fact than this: "Christian theology with its bible has, for the last three centuries, been the worst enemy of science. . . . It draws life on with a dose of stupidity not sufficient to kill it." Renan, *History of the people of Israel*, p. 50.

<sup>7</sup> "The din and smoke of battle have hitherto almost completely concealed the content and true significance of the Hebrew Scriptures. Attention has been focussed upon questions of date and authorship and the vital messages of the individual laws have been overlooked." Kent, *op. cit. Preface*. So also: "There is more material for biblical Sociology than for biblical Theology." Craft, *Practical Christian sociology*, p. 30.

point where it is less easy to establish the exact connection between economic concepts and social life.

In the study of the relation and the interaction between social life and property concepts, it is absolutely necessary to accept the results of the modern critical study of the Hebrew Scriptures. Needless to say, without some hypothesis for use as a critical instrument, to attempt the study of the development of the property concepts in the Hexateuch would be worse than useless. With such an instrument, however, the task is not impossible. This instrument is afforded by the developmental or documentary hypothesis. Based upon the generally accepted results of the so-called "Higher Criticism," this hypothesis embodies the research of centuries. Its validity is therefore assumed in the present inquiry.<sup>8</sup> Accordingly, the familiar sign, J., E., C., D., and P., indicative of the different document and codes, are adopted. The order of their sequence is best seen in the accompanying chronological chart. The period, covered by this study, extends only to the D code, which it touches only in so far as it is necessary to substantiate conclusions not otherwise demonstrable.

The absence of a fully developed property system among the Hebrews has an important bearing upon our study. It necessarily makes the investigation more fragmentary and elementary, but, compensating for this, also more fundamental. There is little doubt that the Hebrew notions of property take us as near the original source of the property concepts as those of any other people of which we know, and probably a little nearer. The Hebrew records and codes are not by any means the most ancient, since we have knowledge of codes, such as the "Code of Hammurabi," which in all probability antedate the Mosaic code by a thousand years.<sup>9</sup> But in this very document we have the fact clearly revealed that the antiquity of a code is no guarantee whatever of its primitivity. The Code of Hammurabi is very old in history; it is very recent in the civilizational evolution. The Hebrew codes are late in history, compared with the Babylonian codes, but they are far more primitive as to their place in the evolutionary process. In no respect is this more evident than in the property concept. With the Hebrews we find it at first ex-

<sup>8</sup> For a brief yet comprehensive summary of this hypothesis see Carpenter and Battersby, *The Hexateuch*, Vol. 1.

<sup>9</sup> Most scholars place this code in the twenty-third century B. C.

pressed only in a custom; in Hammurabi in rigid statute law. The social usages whence that law sprang had been crystallized a long time before the compilation of this code, and it has no plasticity whatever. The legalistic rigor of the code of Hammurabi is as perfect as in the "twelve tables" of Roman law. But this is not all. The code of Hammurabi shows an almost absolute differentiation from ecclesiastical authority and ceremonial institutions. And, most important of all, theocratic ideas, so fundamental in the truly primitive codes, have no room at all in the pure legalism of this code. The presence of a highly developed industrial system is proved by its rigid laws of wages, iron laws, indeed, which are as noteworthy as they are conspicuous in this code.<sup>10</sup>

The few volumes available on the subject of property in its genetic aspect deal with it mostly from the standpoint of physical and legal fact, rather than from that of its psychic origin and development in the social *milieu*. In the interest of such a distinction the subject of this article was formulated; singling out the concepts of property, rather than the mere physical reaction to economic conditions, which does not necessarily tell us much of the accompanying mental attitudes toward this phase of human activity.

The demand is for an elucidation of the property idea itself in early Hebrew society. That this can not be done without actually tracing the owning-function as a physical fact is self-evident, but our aim is to distinguish, so far as possible, the psychical elements involved in the property-practices as they manifest themselves in the sources. This has long ago been done with reference to the God-idea of the Hebrews. Why should not the property idea found in the same sources deserve as close a study, especially since present-day civilization discloses to us the startling fact that the property-idea tends to a very large extent to supplant the real importance of the God-idea in practical life?<sup>11</sup>

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<sup>10</sup> For a detailed study of this subject and the code in full, see Hastings, *Dictionary of the Bible*, Extra Vol., pp. 584-612.

<sup>11</sup> Compare with this the two-fold division of human society employed by Morgan in his *Ancient society*, the kinship and the territorial; that is, the bond of blood in early society is supplanted by the bond of property in civilization. This is his estimate of the importance of the property concept: "A critical understanding of the IDEA of property would embody in some respects the most remarkable portion of the mental history of mankind." P. 6. And W. Robertson Smith has this to say of the property idea, viewed from the standpoint of religion: "We find . . . that as

If science be justified in tracing the mental content of the religious concepts, it is surely its plain duty to try its hand at the disentanglement of one of the greatest problems in civilization, the property concept.

Considering the fundamental nature of this subject in actual life, it may be well to give a concise definition of this concept. That of Professor Giddings is very satisfactory. "The idea of possession, which originated in the instinctive assertion of ownership exhibited by animals, became in the primitive social mind the notion of property, or of property right, which is thus a product of two factors; namely, the assertion of possession on the part of the individual possessing, and the tolerance of his claim, or acquiescence in it, on the part of the community."<sup>12</sup>

The purpose of the first six chapters of this study is to trace the development of the property concepts up to the Deuteronomic code. The seventh, or concluding chapter, is concerned with a correlation of this development with the changes in social life which occurred during this time, noting especially the influences exerted upon these growing property concepts by changing social conditions. That changing economic conditions produced changes in social customs, traditions, thought, and institutions is not denied, but our chief concern is to show the influence of the complex of conditions briefly summarized under the term "social life" upon the property concepts, the belief of the writer being that other social factors, rather than the economic, play the predominant part in the production of changed ideas concerning property.<sup>13</sup> This "intellectual factor" in the institution of property, the following study is intended to illuminate. No apology is offered for considering the concept the most important element in this institution,<sup>14</sup> notwithstanding the fact that economic conditions furnish the only soil in which a property concept could develop, for "an entire science of abstract economy

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soon as the notion of property gets firm footing, it begins to swallow up all earlier formulas for the relation of persons and things." — *Religion of the Semites*, p. 391.

<sup>12</sup> *Principles of sociology*, p. 243.

<sup>13</sup> In this position the writer is in hearty agreement with Professor Giddings. In his criticism of the phrase "subjective utility," defining this as "pleasure attributed to an external cause," Giddings says: "Unless this intellectual factor is included, the whole theory of utility, which has been constructed with so much labor, falls into ruin."

<sup>14</sup> "This, then, is the key to the history of property as an institution — the growth of knowledge." Jenks, *History of politics*, p. 100.

ics cannot be regarded as precedent to sociology as a whole. Initial utility is antecedent to association, but association is antecedent to marginal utility, subjective cost, and subjective value.''<sup>15</sup> Therefore, the tracing of the idea or the concept in this institution is of primary importance, for "whether or not notions of right and wrong begin to dawn in consciousness before any social relations are established, their development is the result of association.''<sup>16</sup>

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<sup>15</sup> Giddings, *op. cit.* pp. 44-45.

<sup>16</sup> *Ibid.*

## CHAPTER II

### THE DIVINE PROPERTY-RIGHT

The property notions that we meet in the traditional period are rather vague and obscure. One element, however, stands out in striking relief. This is the conception of Yahweh's property-right. It is prominent in the old "Song of Deborah."<sup>1</sup> Here we find it asserted as the right of the victor over the captured. But the clear and unequivocal enunciation of this right we meet in the Little Book of the Covenant,<sup>2</sup> the oldest part of the C code. "All that openeth the womb is mine<sup>3</sup> . . . . All the firstborn of thy sons thou shalt redeem."<sup>4</sup>

This seems to be the first element of a definite property-right which has grown sufficiently articulate in the consciousness of the people, to be the fundamental stipulation in the epoch-making Covenant between Yahweh and the Hebrew tribes. Therefore, when we meet, in the E document, this divine command to Abraham: "Take now thy son, thine only son whom thou lovest, Isaac, . . . . and offer him for a burnt-offering,"<sup>5</sup> it does not necessarily prove a universal custom of the sacrifice of the firstborn<sup>6</sup> but it does prove the recognized and unquestioned right of the deity to the firstborn of men. Hence the divine ownership of the firstborn is the most conspicuous element of the property-concepts and will serve as our point of departure.

The development of Yahweh's property-right in the progeny of men may be traced from this earliest code. Here the command is clearly expressed that the firstborn child belongs to Yahweh. It is probable that the story of Jephthah's sacrifice of

<sup>1</sup> Judg. 5:1 ff.

<sup>2</sup> Ex. 34:10-26.

<sup>3</sup> Note the simple mode of expression, "li," composed of the preposition with the pronominal suffix, meaning literally "to me."

<sup>4</sup> Ex. 34:19-20.

<sup>5</sup> Gen. 22:2.

<sup>6</sup> This is the view of Letourneau: *Property, its origin and development*, p. 206. "Jehovah himself, . . . . long exacted the sacrifice of the firstborn men, as well as of animals."

his daughter,<sup>7</sup> the slaying of the firstborn in Egypt,<sup>8</sup> and the child sacrifice of Ahaz<sup>9</sup> reflect the same conception. That this is a conception from a very early period in the history of the Hebrews is evident.

In the last one of the above references, however, this practice is mentioned with reprobation. This change in the conception is further emphasized by the prophet Micah. "Shall I give my firstborn for my transgression, the fruit of my body for the sin of my soul?"<sup>10</sup> This question reveals two facts plainly. The one is the recognition of the old principle; the other is the emphatic reaction against it. Thus it proves the persistence of the practice down to the time of this prophet, and also the active agitation, on the part of the religious leaders of the people, against it. A little later the prophet Jeremiah speaks of this practice in more positive terms: "They have built the tower . . . to burn their sons and their daughters in the fire; which I commanded them not; neither came it into my mind."<sup>11</sup> This is an entirely changed conception of the function of the sacrifice of the firstborn. Indeed, the development has proceeded so far that the consciousness of the prophets revolts against the idea of offering to Yahweh any sacrifice whatever in the old anthropomorphic sense. Therefore, we can say that the development of Yahweh's property-right in the firstborn, so clearly set forth in the early code and in the traditional stories, has almost entirely faded out by the time of the pre-Deuteronomic prophets.

The first distinctly expressed reference to Yahweh's property-right in the captives of war and the devoted, occurs at the beginning of the conquest of Canaan. In a J document, the command is given by Joshua, in the name of Yahweh, to devote (*sharēm*, to curse) the entire city and all that it contained to Yehweh, with the exception of one family.<sup>12</sup> A vivid description of the execution of the command is given, and it is concisely stated that "they utterly destroyed all that was in the city, both man and woman, young and old."<sup>13</sup> In the same connection occurs the

<sup>7</sup> Judg. 11:30 ff.

<sup>8</sup> Ex. 11:4 ff.; 12:29 ff.

<sup>9</sup> 2 Ki. 16:3.

<sup>10</sup> Mie. 6:7.

<sup>11</sup> Jer. 7:31; 19:15. For a treatment of the Molech worship in general, see Hastings, *Bible Dictionary*, Vol. 3, pp. 415-417.

<sup>12</sup> Josh. 6:17.

<sup>13</sup> Josh. 6:21.

J narrative of Achan's transgression and the punishment subsequently meted out to him,<sup>14</sup> which gives unmistakable evidence of the deep-rooted conviction of Yahweh's right to the captives and the spoil in war. For interfering with this right and violating it Achan himself apparently becomes an object of it, and is consequently destroyed.

In the period of the monarchy we meet the same fact. The divine command to the king, Saul, is even more explicit than the one we noted above. Here, the destruction of man and woman, "infant and suckling," is distinctly specified.<sup>15</sup> Saul spares King Agag and a great deal of the spoil alive and is therefore violently rejected from his kingship by Yahweh. Agag is "hewn in pieces before Jehovah," by the hand of Samuel.<sup>16</sup> A less drastic but equally significant reflection of this same right is seen in Saul's rash vow, which, but for the popularity of Jonathan, would have cost the latter his life.<sup>17</sup> Another illustration of this divine right is found in the narrative of the death of the seven sons of King Saul.<sup>18</sup> The divine oracle places the responsibility for a famine upon the sin of the dead Saul, in putting to death the Gibeonites, and as an atonement seven of his sons are demanded by the wronged Gibeonites, who "hanged them in the mountain before Jehovah."<sup>19</sup>

The divine right to the captives in war is fully conceded by the early prophets,<sup>20</sup> and in the late P code we find the principle formulated into a clearly expressed law: "No one devoted that shall be devoted among men, shall be ransomed; he shall surely be put to death."<sup>21</sup> This would seem to indicate that Yahweh's right in men, captives, and those devoted increased among the Hebrews during our period. We may safely assume, however, that the clear line of demarcation between the Hebrews and the "nations" is operative in this concept so that the devoted person was either actually or fictitiously an alien. This is plainly indicated by the prophet Isaiah: "For Jehovah hath indignation against all the nations, . . . he hath delivered them to the

<sup>14</sup> Josh. 7:20-25.

<sup>15</sup> 1 Sam. 15:3.

<sup>16</sup> 1 Sam. 15:26-33.

<sup>17</sup> 1 Sam. 14:24-45.

<sup>18</sup> 2 Sam. 21:1-9.

<sup>19</sup> 2 Sam. 21:9.

<sup>20</sup> One exception is found in 2 Ki. 6:22.

<sup>21</sup> Lev. 27:29.

slaughter.''<sup>22</sup> "For my sword . . . shall come down upon Edom, and upon the people of my curse."<sup>23</sup> Thus the "nations" are in reality devoted, and the devoted person among the natives is one considered as "cut off" from his people and therefore an alien. Besides, the enactment of the P code in this respect may owe much to the altogether new set of social conditions after the exile, in which the Judicial function existed apart from the property-right. Thus the difference between the development in the concept of the divine right to the firstborn and to the devoted is largely one of nativity and depends upon the growth of the national consciousness. The firstborn was always a Hebrew; the devoted a gentile.

The divine right to animals is asserted in the Little Book of the Covenant.<sup>24</sup> The firstborn of ox, sheep, and ass, and all the males of the cattle are specified, with the requirement that the firstling of an ass shall be redeemed by a lamb or have its neck broken. In the Judgments of E<sup>24a</sup> the commandment to give the firstborn of the ox and the sheep to Yahweh is repeated with the additional regulation that it is to be given first on the eighth day after birth. In the Words of E<sup>25</sup> this right is referred to in connection with the sacrifice of the burnt-offerings. This burnt-offering, with its implied right of Yahweh to the sacrificial animal, is stated in the Noah story of J where Noah takes of every clean beast and of every clean fowl, to offer for a burnt-offering; thereby causing Yahweh to smell a sweet savor, and also to abstain from cursing the ground in the future on man's account.<sup>26</sup> The same idea meets us in the miraculous sanction of the divine promise to Abraham,<sup>27</sup> where the patriarch in offering simply obeys the divine command regarding the animal; so, in the story of the sacrifice of Isaac,<sup>28</sup> he is represented as doing in regard to his son.

At the opening of the conquest the right to the animals is placed in juxtaposition to the right in men. The ox, sheep, and ass are enumerated as the animals devoted,<sup>29</sup> and later we have the camel mentioned in addition to these.<sup>30</sup>

<sup>22</sup> Is. 34:2.

<sup>23</sup> Is. 34:5.

<sup>24</sup> See chart, p. 1.

<sup>25</sup> *Ibid.*

<sup>26</sup> Gen. 8:20-21.

<sup>27</sup> Gen. 15:9 ff.

<sup>28</sup> Gen. 22:1 ff.

<sup>29</sup> Josh. 6:21.

<sup>30</sup> 1 Sam. 15:3.

When, however, we pass to the preëxilic prophets, we find the conception of the divine right to animals no longer obtaining in its old sense. Micah inveighs against this conception in the same way as against the proprietary right in the firstborn. "Will Jehovah be pleased with thousands of rams, or with ten thousand rivers of oil?"<sup>31</sup>

The same conclusion, therefore, is reached in this case as was noted in the right to the firstborn; namely, that a change had intervened between the early period and the prophetic age, during which the anthropomorphic property-right had faded out. A survival of this concept in a changed form is seen in the following: "I will take no bullock out of thy house, nor he-goats out of thy folds. For every beast of the forest is mine, and the cattle upon a thousand hills. . . . If I were hungry, I would not tell thee; for the world is mine and the fulness thereof."<sup>32</sup>

The only reference to Yahweh's ownership of the land in the early codes is in the form of a command to let the land lie fallow every seventh year.<sup>33</sup> The vineyard and the oliveyard are to be treated in the same way. This refers, of course, more to the use of the ground than the actual possession of it. Still it is to be noted that it refers to soil under cultivation, and in so far differs from the early concept of pastoral land to be had for the mere occupancy.<sup>34</sup>

Land in the sense of "country" is stated to be the property of Yahweh in the early traditions, in which Abraham is represented as receiving the promise of the possession of the land of Canaan.<sup>35</sup> Later it is referred to as an inheritance.<sup>36</sup> That Yahweh was not conceived as the possessor of the entire earth at this early period is seen from a reference to another deity possessing the land but being driven out by Yahweh.<sup>37</sup> But it is land in this general sense of territory rather than land as "real property" that forms the conception of landed values in this early period.

The C code remains practically silent upon this subject, but the prophets revive the conception of the divine right in land in the most emphatic manner. But it is no longer an immediate

<sup>31</sup> Mic. 6:7.

<sup>32</sup> Ps. 50:9, 10, 12.

<sup>33</sup> Ex. 23:10-11.

<sup>34</sup> Gen. 13:9.

<sup>35</sup> Gen. 12:7.

<sup>36</sup> Gen. 15:8.

<sup>37</sup> Judg. 11:24.

right that they assert. It is rather a sort of feudalistic tenure idea of land-ownership under the dispensation of Yahweh, in favor of the poor and the needy.<sup>38</sup> This is the view expressed by Isaiah who refers to the nation and the country as the vineyard of Yahweh and pronounces a woe upon those who disregard his supreme dispensatory right.<sup>39</sup> The prophet Jeremiah speaks in the same strain, referring to the land as Yahweh's "heritage," his "vineyard," and his "pleasant portion."<sup>40</sup> The idea of divine ownership has developed into a certain right of control such as we find in the P code: "The land shall not be sold in perpetuity; for the land is mine."<sup>41</sup> The practice of private property in land has arisen at the end of our period, sharply conflicting with this more spiritualized conception of the divine right, and therefore unsparingly denounced by the prophets.

Aside from those already mentioned the things and objects in general which are specified in the Little Book of the Covenant as belonging to Yahweh are "the first of the first-fruits of the ground."<sup>42</sup> A more comprehensive property-right in things is suggested by the significant sentence: "None shall appear before me empty."<sup>43</sup> The first-fruits, with the addition of liquors, are again mentioned in the Judgments of E, but with the somewhat broader designation of "first-fruits of thy labors."<sup>44</sup>

Chiefly in connection with the devoted thing is the divine right to personal property asserted. The city of Jericho itself and its entire contents are devoted.<sup>45</sup> This devotion goes so far as to include the man who should attempt to rebuild the city. "With the loss of his firstborn shall he lay the foundation thereof, and with the loss of his youngest son shall he set up the gates of it."<sup>46</sup> A similar but less definite right is set forth in the narrative of Saul's sin, in which reference is made to "the chief of

<sup>38</sup> *Cp.* McCurdy, *op. cit.*, Vol. 2, pp. 200-202.

<sup>39</sup> Is. 5:1 ff.

<sup>40</sup> Jer. 12:7-10.

<sup>41</sup> Lev. 25:23.

<sup>42</sup> Ex. 34:26.

<sup>43</sup> Ex. 34:20.

<sup>44</sup> Ex. 23:16.

<sup>45</sup> If doubt as to the nature of this content should persuade one to exclude personal property, one is set right by a detailed description of the objects that caused Achan's transgression. A mantle, silver and gold among a variety of the spoil are specific objects that leave little room for doubt as to Yahweh's actual right in things.

<sup>46</sup> Josh. 6:26.

the devoted things,"<sup>47</sup> which should have been "utterly destroyed." The right appears to have been absolute.

Little is said of this right during the monarchy, but the prophets, while rejecting the efficacy of "ten thousand rivers of oil" as an offering still insist on the property-right of Yahweh to the things in their possession. "I will devote their gain unto Jehovah,"<sup>48</sup> and "Thy treasures and thy substance will I give for a spoil without price."<sup>49</sup> Yahweh's right to things, therefore, did not fade out, but assumed the form of a control rather than of an actual possession. This development followed closely the development of the ideas of the attributes of the deity, from the anthropomorphic to the ethical conceptions.

In the earliest period, as shown in the book of Judges,<sup>50</sup> prosperity is defined as success in war. Later it becomes synonymous with property, and finally we find the conception of prosperity much in the modern sense. Property, in its earliest form among the Hebrews, was attributed to Yahweh's blessing. The Covenant Code is silent with reference to it, but in close connection with the Words of E the following occurs: "He shall bless thy bread and water; and I will take away sickness from the midst of thee. There shall none cast her young or be barren<sup>51</sup> in thy land; the number of thy days, I will fulfill." The promise affixed to the fifth commandment is similar.<sup>52</sup>

The patriarchal stories are full of these references.<sup>53</sup> In these passages, cited below, the explicit reference is to property. In all these cases the divine favor is the direct source of prosperity. Hence we find a great value set upon the parental blessing in Yahweh's name.<sup>54</sup>

A further development of this notion is seen in the idea entertained toward the close of our period of a time when it should be the good fortune of every Israelite to sit "under his own vine and

<sup>47</sup> 1 Sam. 15:21.

<sup>48</sup> Mic. 4:13.

<sup>49</sup> Jer. 15:13.

<sup>50</sup> Judg. 4:23.

<sup>51</sup> This seems to be one of the most important elements of prosperity. Note the frequently recurring phrase "Jehovah opened her womb" (Gen. 29:31, 30:2, 22 ff.). Especially the angry retort to Rachel by her husband: "Am I in God's stead who hath withheld from thee the fruit of the womb?" Compare with this also the exclamation of Eve: "I have gotten a man with [the help of] Jehovah" (Gen. 4:1.).

<sup>52</sup> Ex. 23:25-26.

<sup>53</sup> Gen. 12:2; 24:1, 35; 26:12; 27:27; 30:27.

<sup>54</sup> Gen. 27:12, 38.

under his own figtree.”<sup>55</sup> In this idea the emphasis lies in the contrast between the independent possession of the family inheritance and the amassing of large private possessions which made the old distribution of the land impossible. These individual fortunes are not considered as having their source in Yahweh’s blessing. Instead, they are summarily condemned by the prophets. They are no longer a token of Yahweh’s favor; they have become an object of his intense displeasure.

Amos first gives expression to this changed view. Appearing at the seat of the royal sanctuary, probably at Bethel, and speaking of the confidence which the people have in Yahweh as the source of their great prosperity in war and in wealth, he says: “Woe unto you that desire the day of Jehovah! Wherefore would ye have the day of Jehovah? It is darkness and not light.”<sup>56</sup> The reason for this is their luxury<sup>57</sup> made possible by fraudulent practices.<sup>58</sup> Hosea represents these financiers as hurling defiant boasts of their success in the face of Yahweh.<sup>59</sup> Yahweh, however, analyzes the ease and pronounces sentence: “According to their pasture, so were they filled; they were filled, and their heart was exalted: therefore have they forgotten me. Therefore am I unto them as a lion; as a leopard will I watch by the way; I will meet them as a bear that is bereaved of her whelps and will rend the caul of their heart; and there will I devour them like a lioness; the wild beast shall tear them.”<sup>60</sup> Isaiah pronounces a curse upon the wealthy land-owner,<sup>61</sup> and Jeremiah hurls the charge of greed in the face of priest as well as prophet.<sup>62</sup>

Thus we see a development from the idea that Yahweh prospered Israel in war and then in material possessions to the conception that Yahweh blesses his people in a political or social way rather than in their material possessions.

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<sup>55</sup> 1 Ki. 4:25; 2 Ki. 18:31; Mic. 4:4.

<sup>56</sup> Am. 5:18.

<sup>57</sup> Am. 6:4-6.

<sup>58</sup> Am. 8:5.

<sup>59</sup> Hos. 12:7-8.

<sup>60</sup> Hos. 13:6 8.

<sup>61</sup> Is. 5:8.

<sup>62</sup> Jer. 8:10.

## CHAPTER III

### SLAVERY

The most prominent institution in the social life of the Hebrews was the family, and the fundamental element of the family was slavery.<sup>1</sup> It is the tap-root of the economic life, and serves as a cornerstone for the Hebrew civilization. The two earliest forms of property recorded in Hebrew history are animals and men. Among the Hebrews these two forms of property existed side by side with very little distinction, as the common formula for property shows: "Flocks and herds, men-servants and maid-servants."<sup>2</sup>

Keeping this in mind, we can trace the development of slavery from its early, mild form in the nomadic and pastoral period, through the increasing harshness with the rise of landed property, to the reaction under the preëxilic prophets resulting in the legislation of Deuteronomy.<sup>3</sup>

The property-concept, in this early form of slavery, was not only fundamental but also comprehensive. It included practically every person, aside from the heads of families, in the Hebrew

<sup>1</sup> "The vicissitudes of national life which induce and perpetuate slavery, bring us to the very root and fibre of the social system in Israel." McCurdy, *op. cit.*, Vol. 2, p. 168.

<sup>2</sup> Gen. 12:16; 20:14; 24:35; 30:43; 32:5. It has been argued that slavery among the Hebrews was essentially different from slavery among other peoples, upon the ground that the Hebrew designation of a slave (*ebed*) denotes merely a laborer and not a thing bound or captured as the Greek *doulos* or the Latin *mancipium* implies. (See Spencer, *Descriptive Sociology*, No. 7, p. 4.) But this view is untenable. The annotation may differ, but the connotation of the concept of slavery has been identical wherever slavery has existed. This is abundantly proved not only by the treatment of captives but even more explicitly by the legal term for slave, as expressed in the C code (Ex. 21:21). "He is his money" is the short and concise definition of the relation between the master and the slave. The word used for "money" is *keseph* which means "silver." It is to be noted that this definition is given in the case of a master killing his slave, and occurs immediately after a strict limitation upon the master's right, thereby establishing the fact that the strong humane element in the Hebrew slave regulations had other sources than a fundamentally different concept of slavery itself.

<sup>3</sup> If this late reaction is placed as the basis of the Hebrew conception of slavery, and the Deuteronomic legislation—not to speak of the Priestly regulations—is viewed as prior to the abuses which it aimed to correct, then no clear idea of the property-concept involved in the Hebrew institution of slavery is possible.

population under the principle of the *patria potestas*. The wife and the children were as completely a property of the husband and the father, so far as the right of acquisition went, as were the hapless captives in war. Differentiation with respect to the right of use and of disposition, however, was early introduced.

In this period, practically all the labor was done by slaves.<sup>4</sup> In the early stages of the institution, the slave was a member of the family,<sup>5</sup> occupied positions of trust, and could even possess property and reach affluence.<sup>6</sup> Thus, slavery was looked upon as the normal condition of social relations and involved no disgrace.

The first method of acquisition of human property is generally conceded to be the capture of human beings in time of war. The traditional stories, notwithstanding their idyllic portraits of patriarchal life, clearly reveal that capture in war is one of the primary methods in the acquisition of property in men. When Laban hurls the strongest accusation possible against Jacob for escaping with the wives which he had bought, he has no stronger invective to use than that Jacob had "carried away his daughters as captives of the sword."<sup>7</sup> This shows that the captive was considered the object of the most absolute ownership. The reason is not far to seek. The captor had a perfect right to kill his prey, which is usually done among savages, and we find abundant evidence of this practice among the Hebrews. The C code has not one line of regulation, far less protection, for captives taken in war. It is first in the D code that we find any sign of such a protection.<sup>8</sup> Though the nomadic and pastoral life offered less occasion for this practice than the conquest, still this right is vividly reflected in such stories as the J narrative of the destruction of the inhabitants of Shechem.<sup>9</sup>

At the period of the conquest Israel exemplifies the fierceness of this destruction of the captives that fell into their hands, just as other nations have done at that stage of development. The entire people is represented as apprehending this fate for themselves.<sup>10</sup> Gaining the upper hand, however, they are consistent,

<sup>4</sup> Gen. 3:17; 18:7; 24:10, 20, 26:15, 19, 32.

<sup>5</sup> Gen. 24:2; 1 Sam. 25:14-17.

<sup>6</sup> 1 Sam. 9:7-8; 2 Sam. 9:9-10.

<sup>7</sup> Gen. 31:26.

<sup>8</sup> Deut. 21:10-14.

<sup>9</sup> Gen. 34:25 ff.

<sup>10</sup> Num. 14:3. "Wherefore doth Jehovah bring us unto this land, to fall by the sword? Our wives and our little ones will be a prey."

and deal out this lot in full measure to the conquered.<sup>11</sup> The example set by Adoni-besek<sup>12</sup> is taken up by the Israelites and visited upon himself.<sup>13</sup> Joshua's treatment of the five kings<sup>14</sup> leaves no uncertainty as to the conception of the conqueror's right over the captured. The J narrative of Barak's blessing contains striking evidence of divine sanction of such practices.<sup>15</sup> It is interesting to note that the same principles are followed when the Hebrew tribes clash,<sup>16</sup> so that the practical wiping out of a whole tribe is referred to as simply a "gleaning."<sup>17</sup>

David's raids,<sup>18</sup> especially while he dwelt in the country of the Philistines, and his later treatment of the Moabites,<sup>19</sup> show us that this right did not decrease but rather increased in severity, as the literal interpretation of the following passage indicates: "And he brought forth the people that were therein, and put them under saws, and under harrows of iron, and under axes of iron, and made them pass through the brickkiln: and thus did he unto all the cities of the children of Ammon."<sup>20</sup> This universally acknowledged right is well formulated in the words of Benhadad to King Ahab: "Thy silver and thy gold is mine: thy wives and thy children, even the goodliest, are mine." And it elicits from the king this answer: "I am thine and all that I have."<sup>21</sup> As a terrible example of what this right meant, even at this late period of the divided kingdom, the atrocious practices of Hazael<sup>22</sup> and Jehu<sup>23</sup> may be pointed out.

<sup>11</sup> Josh. 6:21. "And they utterly destroyed all that was in the city, both man and woman, both young and old."

<sup>12</sup> Judg. 1:7. "Threescore and ten kings, having their thumbs and their great toes cut off, gathered their food under my table."

<sup>13</sup> Judg. 1:6. "And they . . . cut off his thumbs and his great toes."

<sup>14</sup> Josh. 10:21, 26. "Joshua called for all the men of Israel, and said to the chiefs of the men of war that went with him, Come near, put your feet upon the necks of these kings. And afterwards Joshua . . . hanged them on five trees."

<sup>15</sup> Num. 24:8. "And he shall break their bones in pieces."

<sup>16</sup> Judg. 12:6. "And there fell at that time of Ephraim forty and two thousand." Judg. 20:42-44. "And there fell of Benjamin eighteen thousand men."

<sup>17</sup> Judg. 20:45. Hebrew word *alal*; used in the same sense in Jer. 6:9.

<sup>18</sup> 1 Sam. 25:22, 34; 27:9-11. "David . . . left neither man nor woman alive."

<sup>19</sup> 2 Sam. 8:2. "With two lines measured he to put to death and with one full line to keep alive." This was done after they were "down on the ground."

<sup>20</sup> 2 Sam. 12:31.

<sup>21</sup> 1 Ki. 20:3-4.

<sup>22</sup> 2 Ki. 8:12; 15:16. "And all the women therein that were with child he ripped up."

<sup>23</sup> 2 Ki. 10:7, 8, 14. Jehu piled the heads of seventy sons of the king in two great piles outside the city gates.

This property-right in humanity, as an object of absolute ownership, when captured in war, is not rejected by the prophets. In spite of their agitation against other forms of oppression, still they see in war only the means of divine retributory justice. Clear statements of this fact are afforded in the early prophets, "They shall fall by the sword; their infants shall be dashed in pieces, and their women with child shall be ripped up."<sup>24</sup> This is the sentence against Samaria, because "she hath rebelled against her God." Hence we conclude that with the exception of a general softening of this right in the case of an Israelite, this concept has become strengthened by the bloody warfare of the Hebrews on Palestinian soil.

With this absolute right to the life of the captive, continuing unabated as we have seen, the property-right in captives, when the captor spared their lives, is, of course, self-evident. The example of Laban, already cited, points to the early practice of sparing the captives suitable for replenishing the depleted number of warriors. A very ancient example of this is undoubtedly the words put in the mouth of Sisera's mother by the Hebrew prophetess Deborah: "Have they not found, have they not divided the spoil? A damsel, two damsels to every man."<sup>25</sup> The notable element of the capture of wives among primitive people may be reflected in the wholesale capture of the virgins of Jabesh-gilead, to provide wives for the remnant of the tribe of Benjamin.<sup>26</sup> Of the capture of wives in time of peace we have the clearest illustration in this connection, where the two hundred Benjamites that were still left without wives were told to provide themselves with such by lying in wait for the daughters of Shiloh, at the annual harvest-festival, and to "catch every man his wife."<sup>27</sup>

How far the legislation of the words of E regarding the seduction of virgins<sup>28</sup> is a survival of such a practice as the capture of

<sup>24</sup> Hos. 13:16. See also Amos 7:17 and Jer. 15:2; 16:16.

<sup>25</sup> Judg. 5:30. The case of Abraham is in point here as showing E's conception of the property-right in a captured woman. Abraham receives sheep, oxen, men-servants, and maid-servants, and one thousand pieces of silver from Abimelech, of whose harem Sara had been a member for some time. Turning over this payment he tells Sara: "Behold it is for thee a covering of the eyes to all that are with thee; and in respect of all thou art righted." (Gen. 20:14-16.)

<sup>26</sup> Judg. 21:12, 14.

<sup>27</sup> Judg. 21:21, 23.

<sup>28</sup> Ex. 22:16-17.

wives is impossible to determine definitely. It gives us, however, a clue to the almost perfect silence as to this form of acquiring possession of a woman. Let it be noted that the cases discussed dealt with the capture of Hebrews. An increasing complexity of settled agricultural life made woman more valuable. So also the frequent wars. Hence possessors of daughters and female slaves naturally guarded their own so far as possible and insisted upon the payment of a *mohar* later to be noticed. The legal point in the question of seduction, it will be noted, is just the remuneration for the pecuniary loss suffered by the father, who was the owner of the virgin, whether daughter or slave. A further helpful suggestion is given by the rule that the money was to be paid whether the woman was given to the seducer or not. This law is evidence of the fact that purchase of wives had superseded a still older and more antiquated method of acquiring the property-right in a woman by simple capture. Moreover, by the time of the Deuteronomic legislation it is plain from the regulation concerning the treatment of a foreign woman, captured in war, that acquisition of property-rights in Hebrew women by capture had practically ceased.<sup>29</sup> While the pecuniary interest tended to discourage such a practice in Hebrew women, it was equally strong in encouraging the practice with reference to foreigners,<sup>30</sup> until a greater enlightenment and a growing sensitiveness to abuses called for a regulation of the practice. The silence of the prophets upon this subject receives an explanation when their belief in the justice of war is recalled. The facts lead to the conclusion that the practice of capturing or stealing a Hebrew woman, while lingering in the memory of the early writers and instanced in a few sporadic cases, fell into disuse during this early period, and only the foreign captive was considered a prey without price. It is unthinkable that the prophets would have passed such a practice as wife-capture of Hebrew women by without notice, had it existed, and also that the Deuteronomic legislation would have protected the foreigner while paying no attention to the native captive.

Thus we see this practice of acquiring women from among the

<sup>29</sup> Deut. 21:10-14.

<sup>30</sup> Cp. Num. 31:35-41. Of thirty-two thousand Moabite virgins, the Levites received three hundred and twenty, the priests thirty-two, and the rest were divided between the warriors and the congregation.

Hebrews by capture die out in the course of the Hebrew social history covered by our period, and a softening of the severity in the treatment of the captured foreign woman.

Very few male slaves were needed in the nomadic and pastoral stage of society. Therefore, the males were usually exterminated, except under special circumstances. While practically all the work was done by slaves, this work was limited in extent. A rather remarkable instance of the conception of task-work occurs in the familiar narrative in *J* concerning the oppression of the Hebrews in Egypt.<sup>31</sup> It will be noticed that the cause of this oppression is not pictured as a result of war, but conceived of as planned to prevent the increase of the tribes, and thus to avoid rebellion.

With the successful beginning of the Conquest we see these ideas put in practice by the Hebrews themselves. A striking illustration is afforded by the ruse of the inhabitants of Gibeon. The aim of their repeated pledge of submission to captivity<sup>32</sup> is only to avoid extermination, and the nature of the covenant made with them is stated by *J* in the words, "And Joshua made a covenant with them to let them live."<sup>33</sup> Upon discovery of the deception, this covenant is not violated, but the curse of perpetual bondage as "hewers of wood and drawers of water" is pronounced upon them.<sup>34</sup> This evidently proved advantageous to the Hebrews and when, owing to a more settled life for the Hebrews after the Conquest, the enslavement of the Canaanites proved more profitable than their complete destruction the males as well as the females were spared and enslaved.<sup>35</sup> *J* states explicitly that this was the case especially "when the children of Israel were waxen strong."<sup>36</sup>

We look in vain for any modification of the lot of the captive slave in this period. To spare the life of the captive was the height of clemency and the task-work was left to the individual owner's regulation and according to his interest. In the D code, following this period, we do find a softening of the lot of the

<sup>31</sup> Ex. 1:8 ff.

<sup>32</sup> Josh. 9:8, 9, 11.

<sup>33</sup> Josh. 9:15.

<sup>34</sup> Josh. 9:23, 27.

<sup>35</sup> Josh. 16:10, Judg. 16:21.

<sup>36</sup> Josh. 17:13.

slave, in that one who had been taken as a wife or a concubine could not be sold.<sup>37</sup>

The next important form of acquisition of property-right in human beings is through birth within the "house" or family. Definite evidence upon this point appears at first sight to be very meager if not altogether lacking. The chief reference is found in connection with the household of Abraham, in the designation of his chief slave and steward as one "born in the house."<sup>38</sup> But the literal rendering is "son of the house" (*Ben-beyith*). This leads us at once to the root of this property concept. The child of the master and the chief wife was subject to the right of ownership as well as the child of the slave.<sup>39</sup> The reason is that the wife herself is the property of the husband. Keeping this in mind, it will not seem strange if the word "son" is used in the sense of offspring upon the basis of property-right in the mother, rather than upon the basis of direct parenthood.<sup>40</sup> This is clearly so in the case cited. Dammesek Eliezer is called a son although the context proves that he did not stand in blood-relation to Abraham. This may, therefore, be taken as the primary conception of ownership of those "born in the house." It is borne out by the fact of the legitimacy of the children, which depended entirely upon the property-right in the woman.<sup>41</sup> Of course, the idea of fatherhood soon comes into the foreground but we have abundant evidence of the property-right in the woman as the primary condition for the legitimacy of the child. The ownership of a "handmaiden" gave Sara, Leah, and Rachel legitimate offspring.<sup>42</sup> A distinction, the steps of which can be seen in the cases of Jephthah<sup>43</sup> and Hosea,<sup>44</sup> in this respect develops before the Exile, with respect to the class of slaves "bought for money."

The master's property-right over the members of the household was originally as absolute as the right over captives.<sup>45</sup> Abraham

<sup>37</sup> Deut. 21:10-14.

<sup>38</sup> Gen. 15:3.

<sup>39</sup> Gen. 19:8; Judg. 19:24. See also Smith, *Kinship and Marriage*, pp. 291 ff., and for the ancient rigidity of the paternal power compare Mommsen, *History of Rome*, Vol. 1, pp. 88-92.

<sup>40</sup> See Maine, *Early Institutions*, pp. 310-311.

<sup>41</sup> Cp. Robertson Smith, *op. cit.*, pp. 129-155.

<sup>42</sup> Gen. 16:2; 30:1 ff.

<sup>43</sup> Judg. 11:1 ff.

<sup>44</sup> Hos. 1:2; 4:14.

<sup>45</sup> Dr. Frants Buhl says: "Der Vater ist Herr im Hause. Sein Eigenthum sind

had a perfect right to expose his son with the bond-woman<sup>46</sup> and an equally absolute right to sacrifice the son of the principal wife.<sup>47</sup> Likewise Laban disposes of his daughters and the price paid for them as well.<sup>48</sup> So firmly rooted is this right that Laban could tell Jacob concerning the daughters long ago sold: "The daughters are my daughters and the children are my children."<sup>49</sup> But perhaps the best illustration is the matter of fact way in which the Judgments of E treat of this concept. "If thou buy an Hebrew servant,"<sup>50</sup> "and if a man sell his daughter,"<sup>51</sup> these sentences indicate that the property-right in children was so common and generally acknowledged as not even to merit a second thought. The conclusion drawn from the language used in the designation of Eliezer finds powerful support in the rule laid down in these Judgments: "If the master give him (*i. e.* the slave) a wife, and she bear him sons or daughters; the wife and her children shall be her master's."<sup>52</sup> Does the fact need to be pointed out that in this case ownership and not paternity serves as a basis for the child's relation to the master?

An interesting emphasis is placed upon this method of acquiring property by the indemnity put upon the one causing the destruction of an unborn child,<sup>53</sup> clearly pointing to an actual pecuniary value even before birth.

Aside from a growing differentiation between the wives of different ranks and its reflection upon the children born from them, the property-right in those "born in the house," whether children or slaves, continued strong throughout this early period. The right over the child's life is reflected in Jephthah's vow<sup>54</sup> and in the attempted execution of the rash vow of Saul,<sup>55</sup> as well

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Weib und Kinder, weshalb er seine Frau verstoßen und seine Kinder als Sklaven verkaufen kann. Ursprünglich hatte er gewiss auch unbeschränkte richterliche Gewalt, so dass er seine Kinder mit dem Tod bestrafen konnte." *Die sozialen Verhältnisse der Israeliten*, p. 29. And McCurdy draws this conclusion: "We have seen that, as far as the testimony of the narrative portions of the Old Testament is concerned, the power of the father was reckoned to be absolute." (*Op. cit.* Vol. 2, p. 69.)

<sup>46</sup> Gen. 21:14.

<sup>47</sup> Gen. 22:10.

<sup>48</sup> Gen. 29:19-30; 31:15.

<sup>49</sup> Gen. 31:43.

<sup>50</sup> Ex. 21:2.

<sup>51</sup> Ex. 21:7.

<sup>52</sup> Ex. 21:4.

<sup>53</sup> Ex. 21:22.

<sup>54</sup> Judg. 11:31, 34, 39.

<sup>55</sup> 1 Sam. 14:44.

as in his attempt to kill Jonathan because of his friendship with David.<sup>56</sup>

This extreme right, however, is not countenanced by the prophets who arraign the people for "burning their sons and their daughters in the fire."<sup>57</sup> The relation, moreover, is fully recognized in the question: "is Israel a servant? Is he a home-born slave? Why is he spoiled?"<sup>58</sup> pointing to a differentiation between the slave and the member of the family that is not to be spoiled. It is interesting to note that speaking in the name of Yahweh the prophet says: "I will cause them to eat the flesh of their sons and the flesh of their daughters,"<sup>59</sup> implying a growing sense of the sacredness of the life of one's own child.

This development and perhaps even a further extension of it, is to be traced in the later writers. Joel speaks with reprobation of the practice of disposing of boys and girls for the purpose of drunkenness and vice.<sup>60</sup> And the Priestly writer clearly distinguishes between the son and the slave acquired in either of the two ways, "born in the house" or "bought with money."<sup>61</sup> This concept, therefore, was slightly modified but did not fade out entirely during this period.

The third form, or method, by which property-rights in men were acquired was by purchase. As already noted, this custom is based upon the rights that have occupied our attention in the treatment of the two preceding modes of acquisition. It will be convenient for our purpose to distinguish between men and women in this method of purchase, especially with reference to the limitations imposed by the early legislation.

The keynote of the slave-trade is expressed in the legal definition of the slave referred to at the beginning of this chapter: "he is his money [silver]."<sup>62</sup> The right to trade in men is the cornerstone of the first legislation. To its proper regulation the

<sup>56</sup> 1 Sam. 20:33.

<sup>57</sup> Jer. 7:31; 19:5; 32:35. This prophet, however, recognizes the existence of the ancient concept, placing the property of flocks and herds, sons and daughters in the closest juxtaposition, and expresses both categories of possession by the common phrase, "labor of our fathers" (3:24). Isaiah speaks in the same strain, implying the prevalence of regarding the children as the possession of the parents (13:16; 14:21).

<sup>58</sup> Jer. 2:14.

<sup>59</sup> Jer. 19:9.

<sup>60</sup> Joel 3:3.

<sup>61</sup> Gen. 17:12, 13, 27.

<sup>62</sup> Ex. 21:21.

opening paragraphs and the larger part of the Judgments of E are devoted.<sup>63</sup>

The only specific case cited as an occasion for a compulsory sale of men is in the case of theft, when the thief "has nothing."<sup>64</sup> The implied reason for perpetual slavery on the part of the liberated slave is the affection for the family which the master has given him and which he must leave if he goes out.<sup>65</sup> The motives for the sale of men are otherwise not mentioned in these Judgments, but must be inferred from actual cases.

Few actual sales of men are recorded in the earliest period. The sale of Joseph is the most conspicuous. He is sold first by his brothers<sup>66</sup> to the Ishmaelites, and then sold by the latter to the Egyptian courtier.<sup>67</sup> From the detailed account given of this transaction it is safe to assume that this was a normal condition of a legal trade. The suretyship entered into by Judah with his father as a pledge for the safe return of Benjamin<sup>68</sup> points to this right, and his willingness to be sold as a slave when put to the test proves its validity.<sup>69</sup> The wholesale purchase of practically an entire nation reflects the same practice. "Buy us . . . for bread, and we . . . will be servants unto Pharaoh."<sup>70</sup> "And as for the people, He removed them to the cities from one end of the border of Egypt even to the other end thereof."<sup>71</sup>

The motive here suggested as being a case of necessity can be traced in its further development later on. We are told of a widow who is complaining that the creditor is about to procure her two sons as an indemnity for the debt she could not pay.<sup>72</sup> And David is said to have received into his band of outlaws "every one that was in debt."<sup>73</sup>

By the prophetic period two elements in the practice and theory of Hebrew slavery have become distinct. The one is that the love of gain is the leading motive for this traffic; the other that the ethical consciousness of the prophets condemns this practice. Amos proclaims a national punishment because "they sold

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<sup>63</sup> Ex. 21:1-11, 20, 26, 27, 31, 32.

<sup>64</sup> Ex. 23:3.

<sup>65</sup> Ex. 21:4-5.

<sup>66</sup> Gen. 37:27-28.

<sup>67</sup> Gen. 39:1.

<sup>68</sup> Gen. 43:9.

<sup>69</sup> Gen. 44:33.

<sup>70</sup> Gen. 47:19.

<sup>71</sup> Gen. 47:21.

<sup>72</sup> 2 Ki. 4:1 ff.

<sup>73</sup> 1 Sam. 22:2.

the righteous for silver and the poor for a pair of shoes.”<sup>74</sup> Micah complains that “they hunt every man his brother with a net,”<sup>75</sup> and Isaiah has this suggestive phrase: “I shall make a man more precious than fine gold; even a man than the golden wedge of Ophir.”<sup>76</sup> It is to be noted, however, that this applies only to the native Hebrew. Thus, we notice a powerful reaction against the traffic which tended to modify it but was wholly unable to abolish it. The steps in the development of this trade in men seem to be war, theft, necessity, and finally the love of gain or profit that called forth the denunciation of the prophets.

The practice of buying women has already been indicated. The patriarchal stories describe it in minute detail.<sup>77</sup> The same principle is involved in the gifts of precious things to the brother and the mother of Rebeckah, as well as the gifts given by Abimelech to Abraham as a “covering of the eyes” for the temporary possession of Sara.<sup>78</sup>

It seems perfectly safe to infer that at first it was only the powerful master that could prevent wife-capture and always demand a price. Thus Caleb gives his daughter as the price of prowess,<sup>79</sup> and Saul promises his daughter to the one who should kill Goliath.<sup>80</sup> This price paid to the father then came to be regarded as a dowry (*mohar*) which in reality is nothing else than the original price of purchase. Therefore David reasons with those who advise him to become the son-in-law of the king thus: “Seemeth it to you a light thing to be the king’s son-in-law, seeing that I am a poor man and lightly esteemed.”<sup>81</sup>

It is evident that this purchase in the case of the wealthy and powerful soon became more or less obscured, while it still continued among the less prosperous. This we find, indeed, implied in the prophetic agitation against economic oppression. Upon this basis, therefore, we may look for an incipient differentiation during our period. And it is found in the cases already alluded to of Jephthah and Hosea. It was on account of his descent on his mother’s side that Jephthah was driven out from the family.<sup>82</sup>

<sup>74</sup> Amos 2:6.

<sup>75</sup> Mic. 7:12.

<sup>76</sup> Is. 13:12.

<sup>77</sup> Gen. 29:18, 23, 27, 28.

<sup>78</sup> Gen. 24:53; 20:16.

<sup>79</sup> Josh. 15:16.

<sup>80</sup> 1 Sam. 17:25.

<sup>81</sup> 1 Sam. 18:23.

<sup>82</sup> Judg. 11:1, 2.

Hosea is twice told to take a wife of whoredom and upon the second occasion of this command he describes the purchase as follows: "So I bought her to me for fifteen pieces of silver, and a homer of barley and a half-homer of barley."<sup>83</sup> We are not informed of such a case elsewhere among the people at this time. It would also seem as though the action of the prophet was meant as an object lesson to the people. It is therefore probable that the practice of buying the actual wife had been abandoned during our period and that the dowry was paid to the wife instead of the father.<sup>84</sup> This would only mean, however, that the purchase for the purpose of offspring had faded out; not that the practice of selling women for service was done away with, still less that the property-right in the woman was abrogated. In support of this it need only be stated that the Deuteronomic code recognizes the right to sell men and women.<sup>85</sup> Important modifications occur, especially in the Priestly code<sup>86</sup> in the case of the sale of Hebrews, although the right is recognized. To deal with this phase of the subject, it is necessary to trace the development of limitations from the beginning.

The first two modes of acquisition have, as has been noted, practically no restriction put upon them, but with the introduction of the third form of gaining a property-right in human beings, that is, by purchase, the first limitation appears. Man had an actual value in money that had to be respected. By the time of the composition of the C code another limitation, an ethical one, is imposed. A human being was not to be possessed by mere might, or by simple capture, as in the case of actual war. In contrast with the practice reflected in the selling of Joseph, by the time the C code was written a step in advance had been taken. It is quite remarkable how emphatically this is laid down in E's Judgments. "He that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death."<sup>87</sup> Disrespect for ownership and disrespect for life were regarded as identical in the legal punishment meted out to the transgressor of either one.<sup>88</sup> The valuation of a son or daughter is left to be

<sup>83</sup> Hos. 3:2.

<sup>84</sup> Cf. *Encyclopedia Biblica*, s. v. "Marriage," Vol. 3, p. 2942.

<sup>85</sup> Deut. 15:12.

<sup>86</sup> Lev. 25:39.

<sup>87</sup> Ex. 21:16.

<sup>88</sup> Ex. 21:12.

agreed upon but the common servant has a legal value of thirty shekels of silver.<sup>89</sup>

Attention is called to the significant expression of Amos, frequently repeated: "Selling for a pair of shoes." It requires no stretch of imagination to detect an indignation implied in the very cheapness of the price. That indignation is a new thing in the Hebrew concepts of property. That the principle of the price-value maintained itself until very late is, however, well attested, not only by the transaction of Hosea but by the minute regulation of this value in a late P. document<sup>90</sup> and also by the general regulation of the redemption money.<sup>91</sup>

With respect to the limitations of the right of "use and abuse" the Hebrew legislation of slavery stands unique in the annals of antiquity. The primary and most important of these limitations is included under the idea of the Sabbatical Year: "If thou buy an Hebrew servant, six years shall he serve: and in the seventh he shall go out free for nothing."<sup>92</sup> It is important to notice that this applies only to the male slave. The female slave, it is specifically stated, "shall not go out as the men-servants do."<sup>93</sup> The limitation of the period of slavery for the male would, however, affect the wife also if the marriage was consummated before the sale into slavery occurred. "If he come in by himself he shall go out by himself: if he be married, then his wife shall go out with him."<sup>94</sup> Evidently, the property-right in the woman, which the man exercised prior to his enslavement, is the reason for this exception to female slavery. If the marriage had taken place after the enslavement the limitation is null and void. The wife and the children as well belong to the master.<sup>95</sup> But the very right to perpetuate his servitude contains a limitation upon the master's right to separate him from his family. The statement "If the servant shall plainly say, I love my master, my wife and my children; I will not go out free"<sup>96</sup> seems to imply the understanding that the master is to let him enjoy this see-

will be recalled, is represented as sold for twenty pieces of silver (Gen. 37:28), while Hosea's wife is procured at the regular rate stipulated in the C code (Hos. 3:2).

<sup>89</sup> Ex. 21:32. *Cp.* Hastings, *Dictionary of the Bible*, Vol. 4, p. 466. Joseph, it

<sup>90</sup> Lev. 27:1 ff.

<sup>91</sup> Lev. 25:51.

<sup>92</sup> Ex. 21:2.

<sup>93</sup> Ex. 21:7.

<sup>94</sup> Ex. 21:3.

<sup>95</sup> Ex. 21:4.

<sup>96</sup> Ex. 21:5.

ondary property-right in his family. Whether the words "he shall serve him forever" express a definite limitation upon the right of the master to dispose of such a bondman is difficult to determine though it appears very probable. No actual case of this voluntarily perpetuated bondage is cited in our sources, so that the only clue to this is in the case of a slave represented as having a family. At least one clear case of this kind occurs, that of Ziba who is said to have had "fifteen sons and twenty servants."<sup>97</sup>

An implied limitation is to be found in the fact that we search in vain for a fugitive-slave law in the early Hebrew legislation. That there were fugitive slaves is well attested, as is seen in the answer that the servants of David receive from Nabal, "there be many servants now-a-days that break away every man from his master."<sup>98</sup> Another instance is found in the first book of Kings<sup>99</sup> where the growing practice of escaping slaves and the lack of an adequate slave law is strongly attested. Shimei lost his life because he had to fetch his runaway slaves back in person. We may assume that he would not have jeopardized his life, had an effective law for the retrieving of slaves existed. For the most part this limitation upon the master's right was made in the interest of the male slave, though there is one example for the female in the case of the Levite's concubine.<sup>100</sup> However, the Deuteronomic legislation against the return of a runaway slave shows that such a practice must have come into existence in the period between the rise of the monarchy and the formation of the D code. While we cannot trace the development in detail, we know that by the time of the Deuteronomic legislation a reaction against such a practice had crystallized into a definite prohibition.<sup>101</sup> Whether this applied also to female slaves we do not know.

A few general limitations were equally valid for both sexes. The master was forbidden to kill his slave outright; and immediate death caused by a weapon (*rod*) involved a "sure" punishment the nature of which is not specified.<sup>102</sup> It is absurd to

97 2 Sam. 9:10.

98 1 Sam. 25:10.

99 1 Ki. 2:39 ff.

100 Judg. 19:2-3.

101 Dt. 23:15. "Thou shalt not deliver unto his master a servant which is escaped from his master unto thee."

102 Ex. 21:20.

think that this punishment was death,<sup>103</sup> and we need only read the next sentence to realize how little this limitation meant. "Notwithstanding, if he [the slave] continue a day or two, he shall not be punished."<sup>104</sup> The very indefiniteness of the language—"a day or two"—is eloquent in its emphasis upon the fundamental concept of the property value of the slave, in showing that when death was not inflicted at once, for example, in the heat of passion, the motive for protection was recognized to be the pecuniary investment represented by the slave, as is, indeed, also specifically stated, "for he is his money."<sup>105</sup>

An apparently more important limitation is found in the case of bodily injury. The master forfeited his investment in the slave if he inflicted permanent injury. The loss of an eye or a tooth is mentioned. For the loss of either one, at the hand of the master, the slave could claim his liberty.<sup>106</sup>

The last limitation to be noted in the C code is the seventh-day rest. "Six days thou shalt do thy work, and on the seventh day thou shalt rest: that thine ox and thine ass may have rest, and the son of thy hand-maid, and the stranger may be refreshed."<sup>107</sup>

It would be intensely interesting to study these limitations in their practical application, but this we are unable to do for the lack of concrete material. The development of these limitations is also obscure. Besides the D code, already touched upon, we have one illustration of a practical attempt to liberate the slaves.<sup>108</sup> This emancipation includes the women as well as the men, and thus shows Deuteronomistic influences.<sup>109</sup> But the important part to notice is, that even at this late date of Zedekiah these limitations are extended only to the Hebrew slaves.

This indicates the direction of the development of these limita-

<sup>103</sup> This is the view of Wallon in his three volume work, *Histoire de l'esclavage dans l'antiquité*. He says: "Le maître qui a tué son esclave, est puni de mort." And the reason he gives for this view is this, "car la loi qui défend de verser le sang humain compte l'esclave parmi les hommes." The important exception he dismisses with a footnote thus: "la loi exceptait le cas où la mort n'était point censée donnée avec intention." Vol. 1, p. 10.

<sup>104</sup> Ex. 21:21.

<sup>105</sup> Ex. 21:21.

<sup>106</sup> Ex. 21:26-27.

<sup>107</sup> Ex. 23:12.

<sup>108</sup> Jer. 34:8, 9. "Zedekiah had made a covenant . . . that every man should let his man-servant, and every man his maid-servant, that is a Hebrew or a Hebrewess, go free; that none should make bondmen of them, to wit, of a Jew his brother."

<sup>109</sup> "And all the princes and all the people obeyed, that had entered into the covenant . . . they obeyed, and let them go." (*Ibid.*, v. 10.)

tions and shows that except between Hebrews, among whom the conquest and the national life had developed a free growth of the "consciousness of kind," the property right in slaves maintained itself intact throughout our period. The outcome of the case under discussion goes far to prove this. The release was temporary, "under the influence of a temporary panic," as McCurdy thinks.<sup>110</sup> In this early period, therefore, we find but very little progress in the development of the limitations on the property-right in men. A more fruitful field will be the study of the bondage of women, in which greater progress was made; though this progress is more in the nature of a distinction, on the one hand between the native and the foreign wife, and on the other between the wife and the concubine and the female servant rather than a fundamental change in the property-concept itself.

The right of acquisition of female property was limited only by the cost of purchase and maintenance.<sup>111</sup> We have noted traces even of a time when the woman was to be had for the mere taking. Up through this period she is the chattel of man. "It would be misleading to apply the term 'free woman' to any Israelitess, except perhaps a widow."<sup>112</sup> It is important to notice that in the Hebrew terminology of the early period, "woman" and "wife" are identical terms. One word, *ishshah*, includes both concepts; and it is only the context that is responsible for the differentiation by the translators of the Bible. This identity of terms indicates that the original notion of woman's function of motherhood was the fundamental idea among the Hebrews. While treated as a valuable chattel, woman was not altogether regarded from the point of working efficiency. "Women were looked upon rather as potential mothers, destined to give the tribe the most priceless of all gifts, namely, sons."<sup>113</sup> This is reflected by the women themselves. "Give me children or I die,"<sup>114</sup> strikes the keynote of the deepest emotion of a

<sup>110</sup> *Op. cit.*, Vol. 2, p. 173, footnote.

"But afterwards they turned, and caused the servants and the handmaids, whom they had let go free, to return, and brought them into subjection for servants and for handmaids." (*Jer. 34:11.*)

<sup>111</sup> See Hastings, *Dictionary of the Bible*, s. v. "Family," Vol. 1, pp. 846-850. *Judg. 8:30; 9:2.*

<sup>112</sup> *Ibid.*, p. 847. "His [the husband's] wives were his property, and absolutely subject to his authority." *Cp. instances cited in footnote 115 below.* See also the article "Familie und Ehe," in *Herzog, Realen Encyclopédie*, Vol. 5, p. 738.

<sup>113</sup> *Encyclopédia Biblica*, p. 1500.

<sup>114</sup> *Gen. 30:1.*

Hebrew woman. In so far as this conception obtains, it is a limitation upon the property-right of man in the use of woman. It would tend to limit his right over her person and restrict it to association for the purpose of offspring. The rich terminology in the differentiation of degrees of the marital relation points to such a limitation.<sup>115</sup> But, recalling what was said about the right to those "born in the house," we are cautioned not to consider this limitation too seriously.

Hebrew terminology affords another term that sheds light on the property-right in women. The husband is called *baal* which means "owner" or "possessor." This emphasizes the necessity of caution in speaking of limitations to the property-right in women.<sup>116</sup>

The *mohar* is, in the strictest sense, also a limitation, and is but another name for "price;" following the same principle in the case of women as we noted in the case of men. As it gradually grew out of an earlier and freer mode of appropriation, so it gradually gave way to the later conception of "dowry," when the more or less absolute property-right in woman faded from sight.

The limitation of the period of servitude does not exist for women sold into slavery during this early period. When sold, they are sold for life. Upon this point the C code is explicit and emphatic: "If a man sell his daughter to be a maid-servant, she shall not go out as the men-servants do."<sup>117</sup> The context, while it does not state specifically that the purchase must be for the purpose of wifehood or concubinage, is nevertheless strongly suggestive of this as the predominant motive. The rules and regulations affect only the woman who is "espoused" either to the master himself or to his son. No law protects this relation between slaves, except by means of perpetual slavery voluntarily entered into by the male.<sup>118</sup> But if the woman stands in the marital relation to the master or to his son, she is protected against ejection. If she is the concubine or the wife of the mas-

<sup>115</sup> Among these are *amah*, "maid," *shipshah*, "maidservant," *pilleghesh*, "concubine," *qedeshah*, and *zannah*, "harlot." Compare with this the dark pictures of the husband's right as painted in Judg. 19:25-30; and the father's right as seen in Gen. 19:8, and Judg. 19:24.

<sup>116</sup> For a full discussion of this subject, see Smith, *Kinship and Marriage*, pp. 73 ff.

<sup>117</sup> Ex. 21:7.

<sup>118</sup> See p. 29.

ter, he is under the obligation to accept a redemption price, if he should become displeased with her, and he is definitely forbidden to sell her "unto a strange people."<sup>119</sup> The purchase of a maiden for a son entitled her to treatment as a daughter.<sup>120</sup>

The most important of all the limitations upon the owner of a woman is that of the right of the first wife upon the occasion of the man's purchase of a second woman. "If he take him another wife; her [that is, the first wife's] food, her raiment, and her duty of marriage shall he not diminish."<sup>121</sup> This strict injunction depicts the probable practices with reference to an ancient "non-support" in colors not overbright. The restriction of abuse is clinched by the statement of a specific penalty for the violation of this law, namely a forfeited property-right. "And if he do not these three unto her, then shall she go out for nothing, without money."<sup>122</sup>

Finally, the limitations of servitude of females have progressed so far during this period that in the laws of the D code, the woman is entitled to the same privilege of emancipation on the seventh year as is the male slave.<sup>123</sup>

The development we have traced shows the woman as the first to be enslaved and the last to escape from the rigor of bondage. It shows further how closely woman's bondage and emancipation is bound up with the social purposes of the family relations, and how, both in its origin and its history, female slavery, at least, is conditioned upon social rather than upon purely economic considerations.

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<sup>119</sup> Ex. 21:8. Here is practically the only restriction on the right of disposition that we find in this period.

<sup>120</sup> Ex. 21:9.

<sup>121</sup> Ex. 21:10.

<sup>122</sup> Ex. 21:11. It might be in place here to notice the primary right of the first husband as indicated in the case of David and Michal, the daughter of Saul. After years of separation, during which time Michal was the wife of Paltiel, her erstwhile husband, David, when strong enough to do so, demands her back; and she is taken by force from her last husband. (2 Sam. 3:14-16.) The case of Hosea seems to show a dissolution of this right as he had to buy his former wife back again; and we find conclusive proof of the change in this practice in the D code, by which the return to the first husband is positively forbidden. (Deut. 24:4.)

<sup>123</sup> Dt. 15:12-17.

## CHAPTER IV

### PERSONAL PROPERTY

Ornaments and money as a form of personal property are considered to be of a very early origin. The indications are that very little distinction existed at first between these two forms of property. Indeed, ornaments were at first the only coin in existence, and from the ornamental forms of metal, used as a medium of exchange, the development of money proper took its rise. We find it early in our sources. "Abram was very rich in cattle, in silver, and in gold."<sup>1</sup> No statement as to the form is made. The gift of Abimelech is described as pieces of silver,<sup>2</sup> a term employed also in later instances.<sup>3</sup> But this is merely a gloss of translators, as the original has only the plain term *keseph*, the primary meaning of which is "to be pale or white," hence the derived meaning of "silver" or "white metal." The first conception of the form in which metals were found is expressed by the term *keli*, a word of such a general significance that it includes almost any form of ornaments, weapons, or implements. In connection with ornaments the word is rendered "jewels" by the translators. This is the conception of the form of the silver and the gold in Abraham's possession: "And the servant brought forth jewels of silver and jewels of gold."<sup>4</sup> The same phraseology is used to denote the wealth gotten by the Israelites before departing from Egypt.<sup>5</sup> From such ornaments the golden calf is made.<sup>6</sup> Of the extent to which they were used, the description of the spoil of the Midianites gives us an indication.<sup>7</sup>

<sup>1</sup> Gen. 13:2.

<sup>2</sup> Gen. 20:16.

<sup>3</sup> Gen. 37:28; 45:22.

<sup>4</sup> Gen. 24:53.

<sup>5</sup> Ex. 3:22; 11:2.

<sup>6</sup> Ex. 32:2 ff.

<sup>7</sup> Judg. 8:26. "And the weight of the golden ear-rings that he requested was a thousand and seven hundred shekels of gold; besides the ornaments and collars that was on the kings of Median, and beside the chains that were about their camels' necks."

The only development that can be determined in this kind of possessions is an increase of varieties in the form of these ornaments, plainly indicated by the prophets — one of whom enumerates over twenty kinds of ornaments and apparel<sup>8</sup> — and then the differentiation of ornaments from the weighed money. Differentiation of money from the common form of ornaments appears to come quite early, though the conception of the identity of the two is indisputable in the early J narrative. It is noteworthy that the first word we meet in the sources denoting a currency in the sense of "money" takes us back to the word *keseph*, "silver."<sup>9</sup> It is rendered literally in the first part of the J and E stories in Genesis;<sup>10</sup> later, it is translated "money." This is not due to an unwarrantable arbitrariness on the part of the translators, but to the setting in which the stories occur. Hence it seems probable that money developed first from silver ornaments in Israel. Silver was more common than gold, which would account for its early use both for ornaments and as money. The first time we meet the term "money" in the J and E documents is in the E narrative of the complaints of Laban's daughters that their father had quite devoured their money.<sup>11</sup> A peculiar word *kesitah* is used at its next occurrence,<sup>12</sup> a word which means "lamb," and which has given rise to a variety of inferences.<sup>13</sup> The famine stories seem to show a distinction of silver as money or a medium of exchange.<sup>14</sup>

A definite proof of this differentiation is the word *shekel*, which occurs only twice in the entire book of Genesis, in the late P account of the purchase of the cave of Maepelah.<sup>15</sup> In the J documents, it is found once in Genesis but in a different form than that in which it occurs later.<sup>16</sup>

In the C code the two terms *keseph* and *shekel* are found side by side. Here the distinction of money as an equivalent for other forms of property is clear and concise. It is very suggestive that the word *keseph* is used in the legal definition of the

<sup>8</sup> Is. 3:18-23; also Jer. 2:32.

<sup>9</sup> Gen. 13:2; 20:16, etc.

<sup>10</sup> Gen. 23:15, 16; 24:35, 53.

<sup>11</sup> Gen. 31:15.

<sup>12</sup> Gen. 33:19.

<sup>13</sup> See p. 59.

<sup>14</sup> Gen. 42:1 ff.

<sup>15</sup> Gen. 23:15-16.

<sup>16</sup> Gen. 24:22.

slave and the word *shekel* in specifying the exact price of the slave. This justifies the inference that there existed the concept of a medium of exchange and also the specific pieces of metal of a certain weight, in the sense of a coin.

This seems to be as far as the monetary system proceeded in the earliest period. There is no evidence of any coined money in use; the system of counting metal by weight is clearly proved by the prophets. Amos speaks of dishonest practices in the nature of "making the ephah small and the shekel great, and dealing falsely with balances of deceit."<sup>17</sup> And Jeremiah describes in detail the weighing out of the price of the field that he bought.<sup>18</sup>

Weapons and implements follow very much the same lines of development as ornaments and money. That there was no differentiation at first between weapons, tools or implements we have definite proof in the singular fact that the Hebrews had but one word for both forms of property. Strangely enough this is the same word that we met in the first description of ornaments; namely, the word *keli*,<sup>19</sup> which points unmistakably to the simplicity of this concept and goes far to prove its primitive nature. Nearly all of the objects of personal property, enumerated in this chapter are by the early Hebrews termed simply *keli*.

Undoubtedly the oldest weapon of those mentioned in our sources is the sling, which is a great improvement upon throwing the stone from the bare hand. We find indications of the use of this weapon in war: "There were seven hundred chosen men, lefthanded; every one could sling stones at a hair-breadth and not miss."<sup>20</sup> This high degree of skill with such a weapon is significant, and indicates some importance of this primitive weapon, since it is not likely that men would have become experts at handling an antiquated weapon; nor would such men have been noted as especially important in actual warfare had another and more effective weapon been in general use. Later, we find this

<sup>17</sup> Am. 8:5.

<sup>18</sup> Jer. 32:9.

<sup>19</sup> Not only ornaments, weapons, and implements are included under this term, but also utensils, vessels, instruments, clothing, furniture, armor, harness, yokes (of oxen), and even boats; in short almost every form of equipment for the hunt or for war, as well as for domestic, agricultural, industrial, or commercial pursuits as far as each existed. The best rendering of the general idea of this word would seem to be "things" or "belongings." W. E. Barnes renders it "movable property," in his article "Armour," in Hastings, *Dictionary of the Bible*, Vol. 1, p. 154.

<sup>20</sup> Judg. 20:16.

weapon restricted to the shepherd's use,<sup>21</sup> and its appearance in real warfare is scorned.<sup>22</sup>

The bow and quiver play a conspicuous part in the J narratives. Here we plainly have an advance in the direction of weapons. It is used for the hunt<sup>23</sup> as well as in war.<sup>24</sup> Knives of flint are mentioned in connection with the rite of circumcision;<sup>25</sup> but it is impossible to determine in how far this indicates the absence of metal knives or whether it merely gives a sacred significance to the instrument of flint.

The most typical of the scanty references to the differentiation between weapons and implements is found in the description of the conditions of Israel just before the decisive struggles with the Philistines.<sup>26</sup> No weapons are found in the hands of the people,<sup>27</sup> nor is even a smith left them for fear that they would make for themselves such things.<sup>28</sup> Being short of weapons, the people naturally used whatever they could lay hold of. Therefore it is significant that agricultural implements are mentioned, not to say introduced, at this point. Shares, coulters, axes, mattocks, forks, and goads are enumerated.<sup>29</sup> And, in contrast with these implements, swords and spears are said to be lacking. Hence the people could have used nothing else than such implements and tools as these for weapons in the struggle that followed. When we read of "six hundred men, slain with an ox-goad,"<sup>30</sup> this phrase is apt to be more than an empty figure of speech. Under such circumstances weapons possessed an inestimable value, and we are justified in drawing the conclusion that at no other time in the history of the Hebrews did this form of property assume a more important aspect.

Descriptions of the outfit of the soldier are given in the case of Goliath<sup>31</sup> and of Saul.<sup>32</sup> Monarchical rule, with its standing army, naturally gave a strong impetus to the production and

<sup>21</sup> 1 Sam. 17:40.

<sup>22</sup> 1 Sam. 17:42. "Am I a dog that thou comest against me with staves?"

<sup>23</sup> Gen. 27:3.

<sup>24</sup> Gen. 49:23.

<sup>25</sup> Ex. 4:25; Josh. 5:2-3.

<sup>26</sup> 1 Sam. 13:1 ff.

<sup>27</sup> *Ibid.*, v. 22.

<sup>28</sup> *Ibid.*, v. 19.

<sup>29</sup> 1 Sam. 13:20-21.

<sup>30</sup> Judg. 3:31.

<sup>31</sup> 1 Sam. 17:5-7.

<sup>32</sup> 1 Sam. 17:32-39.

specialization of weapons. Conquest of other armies is represented as introducing new weapons, such as the war-chariots, of which David is said to have captured one thousand from the king of Zoba,<sup>33</sup> and, shortly afterwards, seven hundred from the Syrians.<sup>34</sup> The prophets speak of the old forms of weapons, the sword and spear, and mention also the care taken of the shield by the practice of "anointing" it<sup>35</sup> and covering it<sup>36</sup> when not in use.

In like manner we are safe in assuming that implements and instruments increased both in number and variety, though we do not have any special enumeration of this form of property. Practically the only point of interest in the prophetic literature is the preference shown for the implements as over against the weapons.<sup>37</sup>

The utter absence of the commodity of dress or apparel in primitive society is too familiar to need elaboration.<sup>38</sup> The J writer goes a little further, however, and describes the first steps in the making of clothes. "Aprons" of fig leaves sewn together, and then "coats of skin" are the Hebrew writer's conceptions of the origin and early development of human apparel.<sup>39</sup> The texture of the garment mentioned later by the same writer<sup>40</sup> is not specified, though it may indicate an early date of this notion that the word used is not the regular *beqed* but *simlah*, a word which occurs only infrequently in the entire Old Testament.

Throughout the patriarchal stories clothing is recognized as a part of valuable property. It is counted along with precious metals in the J account of Abraham's possessions;<sup>41</sup> the dramatic effect of Joseph's "coat of many colors" is familiar.<sup>42</sup> This form of valuables figures prominently in the "Babylonish mantle" of Achan's theft.<sup>43</sup>

The C code takes special notice of this form of property. It is

<sup>33</sup> 2 Sam. 8:4.

<sup>34</sup> 2 Sam. 10:18.

<sup>35</sup> Is. 21:5.

<sup>36</sup> Is. 22:6.

<sup>37</sup> Is. 2:4.

<sup>38</sup> Gen. 2:25.

<sup>39</sup> Gen. 3:7, 21.

<sup>40</sup> Gen. 9:23.

<sup>41</sup> Gen. 24:53.

<sup>42</sup> Gen. 37:3, 23, 31, 32.

<sup>43</sup> Josh. 7:21.

spoken of as being used for a pledge in their system of borrowing and the lender is forbidden to keep the garment thus pledged over night.<sup>44</sup>

This system continued practically unchanged during this early period, though the law was grossly violated. "They lay themselves down upon clothes laid to pledge by every altar,"<sup>45</sup> and "pull off the robe with the garment from them that pass by securely."<sup>46</sup>

While there is no change in this property-concept, it is interesting to note the height to which it has attained. Possession of clothes has become identical with wealth and power. Isaiah cites the following dialogue: "Thou hast clothing, be thou our ruler," and the answer: "In my house is neither bread nor clothing; make me not a ruler of the people."<sup>47</sup> Thus the growing importance of apparel in the property-notions of the people is seen.

The possession of tents is the earliest element of property in habitations. We find no provision whatever concerning any habitation, in J's description of the conditions of life of the first pair.<sup>48</sup> Later, however, we meet a very orderly explanation of the introduction of this commodity, in the statement that Jabal "was the father of such as dwell in tents."<sup>49</sup> Noah's abode is a tent.<sup>50</sup> So also the dwelling of Abraham.<sup>51</sup> It would be interesting to know in how far, if at all, the practice of the Israelites of the conquest — making themselves "dens, caves and strongholds in the mountains," when reduced to the necessity of hiding<sup>52</sup> — reflects a primitive mode of life when even tents were not a necessity. But the mere silence of the J story of creation, in regard to dwellings does not justify any such inference, although it is very suggestive.

That the tent was regarded as a definite part of personal property is proved by the J statements of Lot's possessions. "And Lot had flocks, and herds, and tents."<sup>53</sup> Notice should be taken of the fact that in this reference not the singular but the plural

<sup>44</sup> Ex. 22:26, 27.

<sup>45</sup> Am. 2:8.

<sup>46</sup> Mic. 2:8.

<sup>47</sup> Is. 3:6, 7.

<sup>48</sup> Gen. 2:1-24.

<sup>49</sup> Gen. 4:20.

<sup>50</sup> Gen. 9:21.

<sup>51</sup> Gen. 12:8; 18:1-2.

<sup>52</sup> Judg. 6:2; 1 Sam. 13:6; 1 Ki. 18:4.

<sup>53</sup> Gen. 13:5.

number is used. The cases cited above seem to imply only the one common tent,<sup>54</sup> while in the later patriarchal stories this commodity has differentiated into the tents of the master, the wives, and the servants.<sup>55</sup> This is a big advance beyond the one common tent, and has an important bearing upon the development of this form of property, since it is a direct result of the increased number of wives and servants, and it is also an indirect testimony to their importance or value.

The tent as a dwelling is mentioned throughout the Hexateuch, and while it figures even as late as the time of the Divided Kingdom,<sup>56</sup> mention is rare, and the prophets have only a few references to this form of property.

Development of habitations among the Hebrews in the form of huts, or houses, we trace first in the stories of the exodus from Egypt, where the two side-posts and the lintel of their "houses" are mentioned.<sup>57</sup> Before this time, however, even in the time of Lot, the Canaanites are represented as dwelling in houses. The abodes in Sodom are "houses" with "roof" and "door" that could be "broken."<sup>58</sup> It must not be forgotten that the Hebrew language, even to a greater extent than the Greek and Roman, uses the designation "house" (*bayith*) for "household" or "family."<sup>59</sup> Therefore, we find the "house" mentioned in the early stories that clearly reflect a tent-dwelling only.<sup>59</sup>

References to houses as dwellings increase continually from the narratives referring to the Egyptian civilization<sup>60</sup> down to the close of the period of our study. No specific citations are needed to point out the descriptions of the houses in the walled cities of Canaan at the time of the conquest, nor the fact that these were occupied by the conquerors, in so far as they were not razed to the ground, after the people became accustomed to a settled life. The building activity during the monarchy is quite familiar. While it is safe to assume that the poorer classes had to be content to dwell in tents and huts, long after the more well-to-do lived in well-made houses, yet early legislation is concerned

<sup>54</sup> See also Gen. 18:6.

<sup>55</sup> Gen. 24:67; 25:27; 31:33.

<sup>56</sup> 1 Ki. 12:16.

<sup>57</sup> Ex. 12:7.

<sup>58</sup> Gen. 19:3 ff.

<sup>59</sup> Gen. 19:2-3.

<sup>60</sup> Gen. 39:1 ff.

only with dwellings in the forms of houses.<sup>61</sup> This may be due chiefly to the fact that this legislation was primarily concerned with the interest of the wealthy. There is no direct regulation of this kind of property, though it is clearly implied that it was an object of ownership.

In the time of the prophets it is different. Amos gives us a vivid picture of what property in houses meant in his time. He mentions different kinds of houses, showing a high development of this form of property: "I will smite the winter house with the summer house; and the houses of ivory shall perish, and the great houses shall have an end."<sup>62</sup> We gain an idea of the costliness of these structures from such passages as: "Ye have built houses of hewn stone but ye shall not dwell in them."<sup>63</sup> It is interesting to observe that the divine displeasure, manifest in the mention of these buildings, depends upon an abused right of private property. Two counts are held against the owners of these "palaces": the first is that they had been built by "unrighteousness, injustice, and oppression";<sup>64</sup> the second, that the purpose, for which they had been built and made to serve, was covetousness, to "store up violence and robbery in their palaces."<sup>65</sup> A number of other objections against the practices of the aristocracy owning these houses are brought forth. "They covet . . . houses and take them away;" and "the women of my people ye cast out from their pleasant houses."<sup>66</sup>

Thus, we have a development clearly traced from the common tent of the nomad to the privately owned palace of the Hebrew nobleman, apparently very much like the modern capitalist.

The term "stuff," or furniture, in our source is only another rendering of the Hebrew word *keli*. At first it denotes the various furniture of the tent, including such items as the household gods.<sup>67</sup> The simplicity of this equipment can be traced in the story cited, though the property-right in these things is

<sup>61</sup> Ex. 20:17; 21:6; 22:7-8.

<sup>62</sup> Am. 3:15.

<sup>63</sup> Am. 5:11. See Spencer, *Descriptive Sociology*, No. 7, p. 104.

<sup>64</sup> Jer. 22:13 ff. "Woe unto him that buildeth his house by unrighteousness, and his chambers by injustice; that useth his neighbor's service without wages, and giveth him not his hire; that saith, I will build me a wide house and spacious chambers, and cutteth him out windows; and it is ceiled with cedar, and painted with vermilion." See also verse 17 of this chapter.

<sup>65</sup> Am. 3:10.

<sup>66</sup> Mic. 2:2, 9.

<sup>67</sup> Gen. 31:30 ff.

clearly shown. Such property is also mentioned in the J account of the removal of Jacob's family to Egypt.<sup>68</sup> It is also conspicuous and the object of strict regulation in the C code.<sup>69</sup> Still, even as late as the time of Elisha the comforts do not appear to have been many. A short description of the outfit of a room of that time mentions a bed, a table, a seat, and a candlestick.<sup>70</sup> This was the furniture provided not by the poor but by "a great woman," who provided it with great care for the "man of God."<sup>71</sup> Like other forms of personal property it is highly developed at the end of this period when imprecations are uttered by the prophets against those who "store up violence and robbery in their palaces" and "that lie upon beds of ivory, and stretch themselves upon their couches."<sup>72</sup> The same aversion is noticeable to this form of property as was expressed by the prophets in the case of costly buildings.

The steps along the line of the development of food-stuff seems to fall into two groups, the vegetarian and the meat diet. The former was undoubtedly the staple among the common people throughout this period.<sup>73</sup> It figures prominently in the bargain between Jacob and Esau, one of the first commercial transactions recorded in our sources,<sup>74</sup> and forms an important item in the transfer of property under the form of gifts and presents.<sup>75</sup> Meat and other animal food, such as milk, butter, and cheese, was early used, but chiefly on festal occasions.<sup>76</sup> Of the development of luxurious habits in the use of these products the prophets give us ample testimony.<sup>77</sup> Among the more noteworthy facts which they reveal is this that strong drink is one of the articles of consumption at the banquets of the aristocracy.<sup>78</sup>

Property in animals is represented as very important in the early writings. Flocks and herds are second only to human beings. Abraham is thought of as "very rich in cattle" and Lot

<sup>68</sup> Gen. 45:9 ff.

<sup>69</sup> Ex. 22:7.

<sup>70</sup> 2 Ki. 4:10.

<sup>71</sup> 2 Ki. 4:8, 9, 13.

<sup>72</sup> Am. 3:10; 6:4.

<sup>73</sup> Gen. 2:9, 16; 3:17-19.

<sup>74</sup> Gen. 25:34.

<sup>75</sup> Gen. 43:11; 1 Sam. 9:7; 25:18; 30:11-12; 2 Sam. 16:1-2; 17:27-29; 2 Ki. 4:39; Jer. 7:18 ff.

<sup>76</sup> Gen. 27:6-8; 1 Sam. 28:24-25.

<sup>77</sup> Is. 7:22; 22:13; Am. 6:4.

<sup>78</sup> Is. 5:11, 12, 22; 19:14; Am. 4:1; 6:6.

had "flocks and herds."<sup>79</sup> The heirs of Abraham are represented in a similar way.<sup>80</sup> The price paid by Jacob for his wives was service in tending the flocks of Laban.<sup>81</sup> Increase of the flocks under his care was the only capital out of which his wage was paid afterwards.<sup>82</sup> The interesting breeding experiments, undertaken by Jacob,<sup>83</sup> shows that cattle was the most important of his possessions, aside from his family. The words of the sons of Laban, "Jacob hath taken away all that was our fathers"<sup>84</sup> emphasize the same concept, though the sons undoubtedly mean his wives, children, and servants as well as the flocks. Probably the most concise expression upon this point, in these early accounts, is the designation of this sort of property as "riches" in the mouths of Rachel and Leah. "For all the riches which God hath taken away from our father, that is ours and our children's."<sup>85</sup> It is not without significance that the word for "riches" here employed, is first used and occurs only here in the J and E documents of the Hexateuch,<sup>86</sup> while it is regularly used in the later writings.

All this lends weight to the view of the purely pastoral life of the ancient Hebrews expressed in answer to Pharaoh's question regarding their occupation: "Thy servants have been keepers of cattle from our youth even until now, both we and our fathers."<sup>87</sup> In this connection a piece of valuable information is afforded us in the reason given why sheep are not mentioned. Joseph instructs his brethren to avoid the mention of this animal, since "every shepherd is an abomination to the Egyptians."<sup>88</sup> From this it is evident that flocks were considered the original as well as the most common property in animals. But it is not possible from our sources, to determine with certainty the exact order of the conceived sequence of the different animals in their possession. Sheep, goats, oxen, asses, and camels are frequently referred to as making up the flocks and herds. This composition

<sup>79</sup> Gen. 12:16; 13:2, 5; 20:14.

<sup>80</sup> Gen. 25:5; 26:14; 30:43; 32:5.

<sup>81</sup> Gen. 29:18 ff.

<sup>82</sup> Gen. 30:32.

<sup>83</sup> Gen. 30:37-39.

<sup>84</sup> Gen. 31:1.

<sup>85</sup> Gen. 31:16.

<sup>86</sup> It occurs in another form in a P document, Gen. 30:15.

<sup>87</sup> Gen. 46:34.

<sup>88</sup> Gen. 46:34.

of property seems to have remained practically stable during this early period, with the possible exception of the introduction of the horse, originally used for the purpose of war,<sup>89</sup> as a beast of burden.

It is interesting to note that the only definite information as to the actual size of a man's wealth comes to us in terms of property in animals.<sup>90</sup> Nabal's three thousand sheep and one thousand goats—making him a “very great man”—is the most exact statement of the size of the fortune of one individual.<sup>91</sup> The J enumeration of Jacob's gifts to his brother Esau is also suggestive. These gifts are: “two hundred she-goats and twenty he-goats, two hundred ewes and twenty rams, thirty mileh eamels and their colts, forty kine and ten bulls, twenty she-asses and ten foals.”<sup>92</sup> And the Israelites are said to have left Egypt with “flocks and herds, even very much cattle.”<sup>93</sup>

What must be regarded as the really serious fact with respect to this form of property from the developmental standpoint, is its relative importance in the early stages and its insignificance in the later. The value of the produce of the soil, when lacking,<sup>94</sup> is specifically mentioned, but nowhere in the patriarchal stories is this produce put alongside of property in animals, or even counted as property in the same sense. This observation is still more pertinent with regard to real estate. With respect to property in animals, therefore, it is safe to draw the conclusion that its importance gave way with the rise of an agricultural economy and of landed estates.

The produce of the soil seems to follow, and in part, to supplant property in animals at the close of this period, while in regard to the time of its rise it is a later development than ornaments and weapons. While there are indications of an agricultural activity in the early documents, it is of an incidental nature. Isaac reaps “an hundredfold,” but this produce never enters into the conception or statement of his great wealth.<sup>95</sup> It is not even stated of what the crop consisted, and this holds true of the

<sup>89</sup> Judg. 1:19; 2 Sam. 8:4; 1 Ki. 10:28-29; 4:26.

<sup>90</sup> Cp. Judg. 8:30, Gideon's “three score and ten sons;” also 2 Sam. 9:10.

<sup>91</sup> 1 Sam. 25:2.

<sup>92</sup> Gen. 32:14. Cp. 1 Sam. 30:26. David's gifts of spoil.

<sup>93</sup> Ex. 12:38.

<sup>94</sup> Gen. 42:1, 2; 43:1.

<sup>95</sup> Gen. 26:12, 14.

references to the "tilling of the ground" of the first man and woman and also of Cain and Noah.<sup>96</sup> In the case of Noah the planting of a vineyard is mentioned, yet it is first in connection with the famine in Egypt and Canaan that explicit references to this form of property are clearly distinguished. While the "choice fruits, spicery and myrrh, nuts and almonds,"<sup>97</sup> are used as a medium of exchange, the abundant crops of corn in Egypt are the first monopolized property by which Joseph is able to bring the whole kingdom into vassalage to Pharaoh.<sup>98</sup> The definite impression of agriculture is plainly seen in the narrative of the exodus, for, though the galling bondage is the most conspicuous element of their lot, yet the Israelites are not only possessors of flocks and herds but of produce of the soil as well. "The people took their dough before it was leavened, the kneading troughs being bound up in their clothes upon their shoulders."<sup>99</sup> How far this reference reflects the tradition of actual experiences of the Hebrews in Egypt and how far their later experiences as settled agriculturists in Canaan, scholars are unable as yet to determine with certainty.

The report of the spies deals only with the fruit of the land.<sup>100</sup> That the rise of Hebrew agriculture in Canaan was gradual is evident from the nature of the conquest. At the compilation of the C code the ownership of the produce of the field and the vineyard is not only recognized but protected by actual legislation. "If a man shall cause a field or vineyard to be eaten, and shall let his beast loose, and it feed on another man's field, of the best of his own field and of the best of his own vineyard shall he make restitution.<sup>101</sup> So also, if fire destroys a man's "shock of corn, and standing corn," the man kindling the fire is held responsible for its value.<sup>102</sup>

With the increase of population, cultivation of the soil naturally increased and its produce grew in value, until it eventually became valuable. This is clearly set forth by the prophet Amos. "Your treading is upon the poor, and ye take from him

<sup>96</sup> Gen. 2:5 ff.; 4:2; 9:20.

<sup>97</sup> Gen. 43:11.

<sup>98</sup> Gen. 41:47 ff.

<sup>99</sup> Ex. 12:34, 39.

<sup>100</sup> Num. 13:18-33.

<sup>101</sup> Ex. 22:5.

<sup>102</sup> Ex. 22:6.

burdens of wheat.”<sup>103</sup> Amos even gives us information concerning men, who saw the advantage of a “corner in wheat” very much in the modern sense. The prophet’s words touching this phase of commercial life of the times—are as follows: “Hear this, O ye that would swallow up the needy, and cause the poor of the land to fail, saying, When will the new moon be gone, that we may sell grain? and the sabbath that we may set forth wheat . . . that we may buy the poor for silver and the needy for a pair of shoes, and sell the refuse of the wheat?”<sup>104</sup> Thus we see a concept of property in the produce of the soil which is about as highly developed as it can be, and which is totally different from the early notion of a purely pastoral life, in which this produce plays no part in the conception of a man’s possession.

An interesting phase of this changed notion is the contrast afforded between the ideals of these two different occupations. To the J writer, the representative of agriculture is the fratricide Cain, and Abel the “keeper of sheep” is the innocent victim;<sup>105</sup> while to the mind of the prophets, the coming millennium is designated by “swords beaten into plowshares, and spears into pruning-hooks,”<sup>106</sup> and “they shall sit every man under his vine and under his fig-tree.”<sup>107</sup> From this it is evident that agriculture as an ideal occupation has taken the place of the earlier pastoral ideal.

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<sup>103</sup> Am. 5:11.

<sup>104</sup> Am. 8:4-6.

<sup>105</sup> This story probably reflected the attitude of a period antecedent to that of the writer, who probably was living in the midst of a civilization in which property in land, although dominant, was comparatively recent in its introduction, and he reacted against it.

<sup>106</sup> Is. 2:4. Mic. 4:3.

<sup>107</sup> Mic. 4:4.

## CHAPTER V

### REAL PROPERTY

The absence of real property in the earliest J and E records, is one of the striking facts that meet us in our study. The C code itself, though it clearly reflects a settled and agricultural mode of life, is far from explicit as to the system of land ownership that obtained. It will be seen later that the only safe inference from the facts is that the "community system" of land-ownership prevailed, as indicated by Fenton in his *Early Hebrew Life*. Fortunately, the prophets give us a clear insight into the general principles that governed the possession of real property before the exile. But leading up to this late principle of private ownership, we are able to trace the institution of property of real estate from its very beginnings, so far as it is reflected in the traditional notions of the people, to its later transformation in accordance with the changing economic and social conditions.

The notion of an exclusively pastoral, and, indeed, a nomadic ancestry, obtained among the early writers, as was noted in the preceding chapter. It is in their documents, therefore, we must look for the first glimmerings of the concepts of landed property. There is no indication that Abraham was thought of as engaged in agrarian pursuits. He is portrayed as a true nomad, or Bedouin sheik. We are even treated to a definite conception of absolutely free land, to be had for the mere occupancy: "Is not the whole land before thee," are the words of Abraham to his nephew, and of the "well watered" region, "Lot chose him all the plain of Jordan."<sup>1</sup> The divine promises, given to Abraham at this period, reveal a conception of the land in the sense of country for the purpose of a tribal possession, and are strictly in keeping with the notion of free land.

Scarcely any doubt can be entertained as to the genuineness of these lingering reminiscences of actual nomadic experiences in the obscure past of the people. They cannot be re-

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<sup>1</sup> Gen. 13:9, 11.

flections of conditions existing at the time of the writer; indeed, that the actual condition of free land was present at this time is impossible in view of the rich civilization of the Canaanites depicted in our sources as obtaining at the time of the patriarchs and testified to by the Tel-El-Amarna tablets.<sup>2</sup>

While the notion of free land runs through the description of the lives of the other patriarchs as well, important observations are made as to their mode of life, that are of great value to our study. Isaac pursues the same nomadic habits as his father, but we read of him that "Isaac sowed in that land [Gerar] and found in the same year an hundred fold."<sup>3</sup> The J narrator to whom we owe this interesting notice, gives us in the same connection an interesting account of what he conceives to be the most primitive of all forms of real property among the Hebrews, namely, the ownership of wells.<sup>4</sup> This is observed and admirably treated by the late W. R. Smith in explanation of certain religious phenomena of the people. "Property in water is older and more important than property in land. In nomadic Arabia there is no property, strictly so called, in desert pastures, but certain families or tribes hold the watering-places without which the right of pasture is useless. Or, again, if a man digs a well he has a preferential right to water his camels at it before other camels are admitted; and he has an absolute right to prevent others from using the water for agricultural purposes unless they buy it from him."<sup>5</sup> This writer even distinguishes between private and joint ownership in this kind of property, citing Judg. 1:15, in support of the former, and Gen. 29:8, in support of the latter form of ownership.<sup>6</sup> To Dr. Smith it is in reality only the water that counts in the matter of ownership and in that case its bearing upon the matter in hand would be less apparent. It is impossible, however, to escape the impression of the emphasis laid upon the labor expended in the digging of these wells as described in the J narrative. While the water naturally was the object sought, still the location and the labor spent in obtaining it are the two chief elements of value in the elucidation of the rise of landed or real property. That these

<sup>2</sup> See also Paton, *The early history of Syria and Palestine*.

<sup>3</sup> Gen. 26:12.

<sup>4</sup> Gen. 26:18-32.

<sup>5</sup> *Religion of the Semites*, p. 104.

<sup>6</sup> *Ibid.*, p. 105, footnote.

elements became important we have proofs in the C code: "If a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or an ass fall therein, the owner of the pit shall make it good."<sup>7</sup> That the land rather than the water is the most effective item in this property right is beyond question.

Aside from this incipient form of real property we have another reference to a sporadic agricultural activity during the pastoral period, that forms the real basis for actual ownership in land for agricultural purposes. The practice attributed to Isaac of sowing and reaping on soil that was abandoned directly afterwards is conceived as increasing later on. "Behold, we were binding sheaves in the field," are the words by which Joseph is represented as describing his dream to his brethren.<sup>8</sup> No great amount of psychology is needed to interpret the significance of such a sentence with respect to the notion of a growing agricultural activity.

A step further is taken in the E document, in the description of Jacob's transaction at Shechem. This reflects a primitive and elementary yet clear notion of landed values. "And Jacob came . . . to the city of Shechem, . . . and encamped before the city. And he bought the parcel of ground where he had spread his tent . . . for a hundred pieces of money [*kesitah*.]"<sup>9</sup> The simple manner of statement, the important location, the limited extent, and the moderate price tend to render this passage very instructive concerning the inception of landed property-values among the Hebrews.

That the idea of landed property in the mind of the J writer is highly developed is clearly seen. The story of creation by this writer reflects the same view. Man's original and primary purpose was to "till the ground;" an object assigned to him, as J conceives it, even before his creation; apparently J believes it to be the immediate purpose of his existence.<sup>10</sup> A garden is conceived as literally "planted" by Yahweh, and into it man was put, not for possession, indeed, as the subsequent story of the "fall" shows, (where this point of actual authority based upon the principle of the property right is interestingly developed)

<sup>7</sup> Ex. 21:33.

<sup>8</sup> Gen. 37:7.

<sup>9</sup> Gen. 33:18-19.

<sup>10</sup> Gen. 2:5.

but "to dress and to keep it."<sup>11</sup> The thought has been expressed that the temptation itself represents "the awakening instincts of ownership."<sup>12</sup>

The J story of the fratricide places the two functions of pastoral and agricultural activities side by side. "Abel was a keeper of sheep and Cain was a tiller of the ground."<sup>13</sup> The story itself is full of significance according to the Jewish folklore expressed in the *Agadah*. Here the story of Cain and Abel is viewed as typical of the fierce economic struggle between man and man with its brutal theory of the survival of the strongest.<sup>14</sup>

Clearer evidence of the rise of real property is afforded in the later J records. The descriptions of the famine in Egypt and of the "high finance" of Joseph leave but very little doubt of J's notion upon this point. Joseph gathered up the money, the cattle and the people, but one item was still available, according to this writer, namely, the land. The people are represented as saying: "Our money is all spent; and the herds of cattle are my lord's; there is nought left . . . but our bodies and our lands."<sup>15</sup> The principles involved in the transaction are clearly conceived and plainly stated: "So Joseph bought all the land for Pharaoh; for the Egyptians sold every man his field, . . . and the land became Pharaoh's."<sup>16</sup> Notice is made of the exception of the land of the priests, to which Pharaoh did not acquire the title.<sup>17</sup> The nature of the title which he did acquire is of a truly feudal character. The former owners are permitted to hold it in fief, and are even provided with the necessary seed, but one-fifth of the crops were to accrue to the benefit of Pharaoh, the real owner of the land.<sup>18</sup>

The description of this transaction on a large scale is so vivid

<sup>11</sup> Gen. 2:15.

<sup>12</sup> Matheson, *Representative men of the Bible*, p. 33. The frequent references to the land in the early patriarchal records, can not be made to contribute a great deal towards the elucidation of landed property concepts, since these references convey more of the notion of a divine than of human right of ownership. The only clue that we might glean from these passages would be that they show a communal rather than an individual right to land in so far as the promises were made to the entire posterity of the patriarchs.

<sup>13</sup> Gen. 4:2.

<sup>14</sup> Rosenberg, *Arena*, Vol. 28, p. 37.

<sup>15</sup> Gen. 47:18.

<sup>16</sup> Gen. 47:20.

<sup>17</sup> Gen. 47:22.

<sup>18</sup> Gen. 47:26.

and realistic that one is led to believe that the story is of a rather late origin, and was written at a time when the concept of landed property had made considerable progress under the monarchieal regime, and before the abuses of despotism were deeply felt. At any rate, the feudal form of tenure is the form substituted by this transaction for the communal possession, which is clearly implied as the original mode of ownership in this narrative. The changes thus described as taking place in Egypt within a few years are undoubtedly indicative of the gradual and slow changes in the concept of landed property that took place among the Hebrews on Palestinian soil.

As we proceed in the narratives references to this form of property become more frequent and more definite. Thus, we have the following divine charge to Joshua: "Thou art old . . . and there remaineth yet very much land to be possessed. Now therefore divide this land for an inheritance."<sup>19</sup>

Sufficient evidence has been adduced to show that the J and E documents, while written from the standpoint of a developed concept of landed property, clearly reflect the gradual development of the same in the order stated. It need scarcely be pointed out that the possession of cities, towns, and villages plays a larger part in the early stage of the conquest than the land itself.<sup>20</sup>

Indications of real property in the codes have already been cited as implying a settled and agricultural life. Too much importance can not be ascribed to the fact that while these codes regulate in minute detail the property rights in men, animals, money, and other stuff, and even in the produce of the field or vineyard, still the field itself, or the soil as an object of ownership and therefore subject to regulation, is not mentioned. Many things can be inferred from this fact, but this one point is established, that whatever form of real property obtained, the need of regulation of one man's right to the land as over against another's, had not yet demanded the legislator's attention. Totally different is the condition as depicted by the prophets and in the legislation of the D code,<sup>21</sup> in which this question of the ownership of land plays an important part. The only possible

<sup>19</sup> Josh. 13:7.

<sup>20</sup> Num. 21:25; 32:39-42; Josh. 6:20; 8:19 ff.

<sup>21</sup> Dt. 19:14.

explanation of the initial form of tenure is the communal form of ownership, with which all students of English land tenure are familiar.

In the interim the development of the principle of real property is well described. Measurement of the land meets us in the first book of Samuel.<sup>22</sup> That this is one of the best indications of the acknowledged pecuniary value of the soil, as such, scarcely needs pointing out. With the monarchy established landed property becomes more of a private nature. "Will the son of Jesse give every one of you fields and vineyards?"<sup>23</sup> is the question of King Saul, showing the headway made by feudal practices. Cities are likewise given away as gifts.<sup>24</sup> David announces that he has delivered over the possession of Saul to his predecessor's son, and it is quite clear that this possession consisted of land since the servant of Saul's son is instructed to "till the land and bring in the fruits."<sup>25</sup> A later reference to the same property makes this supposition more certain. The servant of the son of Saul, conspiring to gain possession of the property himself, is at first successful and gets it all, but later, when this servant's perfidy is exposed, the annoyed king exclaims: "Why speakest thou any more of thy matters? I have said, Thou and Ziba divide the land."<sup>26</sup>

It is needless to cite further the less important cases. The outstanding illustration of the extent to which the practice of royal usurpation of the established communal property-rights in land was carried is the crime of King Ahab in getting possession of Naboth's vineyard.<sup>27</sup> This account reveals the fact that there was an established system of family ownership of land, sufficiently strong to baffle even the king in his attempt to lay hold of a part of it that belonged to his subject.<sup>28</sup> How serious this violation of the family right to landed property is considered by the recorder is shown in the curse pronounced upon King Ahab and his wicked queen,<sup>29</sup> which is described as literally fulfilled.<sup>30</sup>

<sup>22</sup> 14:14; also Is. 5:10.

<sup>23</sup> 1 Sam. 22:7.

<sup>24</sup> 1 Sam. 27:6; 1 Ki. 9:16.

<sup>25</sup> 2 Sam. 9:9-10.

<sup>26</sup> 2 Sam. 19:29.

<sup>27</sup> 1 Ki. 21:1-16.

<sup>28</sup> See Fenton's *Early Hebrew life*, pp. 32 ff.

<sup>29</sup> 1 Ki. 21:19, 32-38.

<sup>30</sup> 2 Ki. 9:24 ff. Cp. McCurdy, *op. cit.*, Vol. 2, pp. 200 ff.

The testimony of the prophets that this abuse and the rise of private ownership of land became rampant among the wealthy aristocracy, is clear and concise. "And they covet fields and take them by violence; and houses and take them away: so they oppress a man and his house, even a man and his heritage."<sup>31</sup> In clarion tones that leave no room for uncertainty, the prophet Isaiah refers to the same fact. "Woe unto them that join house to house, that lay field to field, till there be no place, that they may be placed alone in the midst of the earth."<sup>32</sup> Such an utterance proves that family rights, formerly considered sacred and inviolable, were ruthlessly set aside as the concept of private property became more and more definite.

While this is indicative of the change in general, we have a still more concise statement of the details in the trade of landed property by the prophet Jeremiah. He describes minutely not only the actual purchase of a piece of land, but gives us also in this connection the first description of a "bill of sale" occurring in the Bible. "And I bought the field of Hanameel . . . . and weighed him the money, even seventeen shekels of silver. And I subscribed the evidences and sealed it, and took witnesses, and weighed him the money in the balances. So I took the evidence of the purchase, both that which was sealed according to law and custom, and that which was open."<sup>33</sup>

In no other kind of property is the development so marked as in the conception of real property. There is a wide difference between a purely pastoral view of the land in patriarchal times and the concept reflected in the C code. And then there is great progress from the time of the compilation of this code, altogether silent upon this subject, up to the time when the question of the right to landed property had become an issue of national importance. Were the forces that brought about this development fully known, we should have the key wherewith to unlock practically all the great changes in the history of the Hebrew People.

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<sup>31</sup> Mic. 2:2.

<sup>32</sup> Is. 5:8.

<sup>33</sup> Jer. 32:9-11.

## CHAPTER VI

### SPECIAL CONCEPTS

Inheritance does not appear to have been as definite and concrete a concept as is generally supposed. That Dammasck Eliezer is the heir of Abraham seems to point to Abraham's good will, fully as much as to a long established custom of the slave's right to inherit.<sup>1</sup> The sequel of this J and E account of the earliest transfer of property, appears to give a wide latitude to the master's pleasure. The right of the first-born is one of the best attested facts, and yet even this right is not an ironclad rule. Ishmael is the first-born of Abraham, but at the birth of Isaac the right of inheritance is divided between the two.<sup>2</sup> And it is fully within the power of the patriarch to "hearken unto the voice" of the chief wife, and to expel the first-born.<sup>3</sup> The master's right over the disposition of his property at will is rather emphatically expressed in the brief observation, "and Abraham gave all that he had unto Isaac,"<sup>4</sup> an expression, it will be noted, utterly irrelevant, had this power of the master to dispose of his property at will not existed. In point of fact, according to the patriarchal stories not one of the first-born sons of the patriarchs was the chief heir of his father's property. The most prominent example of the right of the first-born is the account of the sale of this right by Esau to his brother Jacob.<sup>5</sup> And in spite of the sale it required the paternal blessing to be of any avail.<sup>6</sup> Jacob likewise gives the precedence not to the first-born, whose birthright he fully recognizes, but to the fourth son.<sup>7</sup> Hence the statement that parental authority scarcely existed in

<sup>1</sup> Gen. 15:2, 3. *Cp.* Underwood, *Distribution of ownership*, p. 26.

<sup>2</sup> Gen. 21:10.

<sup>3</sup> Gen. 21:11. Since descent depended on the master's property-right in the mother, there is no more difference between Abraham's sons than Jacob's sons.

<sup>4</sup> Gen. 25:5.

<sup>5</sup> Gen. 25:29 ff.

<sup>6</sup> Gen. 27:12.

<sup>7</sup> Gen. 49:3, 8.

Arabic society, does not obtain in early Hebrew life in the desert.<sup>8</sup>

It is not merely in the early stages that we find the "patria potestas" extended to inheritance. We meet the same fact in the period of the established monarchy. The case of Solomon's succession to the throne follows the same principles set forth in Isaac's inheriting the wealth of Abraham.<sup>9</sup> It is quite remarkable that the C code is silent as to this apparently important matter of inheritance. The inference is analogous to the case of the system of landed property. So long as property was more personal in its nature, and was held more or less in common, it is reasonable to expect less clearly defined laws of inheritance than after real property has become an object of private ownership.

That this is the development among the Hebrews we can easily trace in the prophetic writings. The most conspicuous example is the violent indignation and the dreadful curse pronounced upon King Ahab for violating the right of inherited property: "Jehovah forbid it me, that I should give the inheritance of my fathers unto thee."<sup>10</sup> In the view of the prophet this crime assumes an importance of a national character, and involves the destruction of the dynasty. But it is to be remembered that the object of inheritance, in the case cited, was family property in land not private or personal property. That this limitation of the rights of inheritance increased we have evidence in the later prophets. The terrible oppression by the aristocracy is perpetrated against "a man and his house, even a man and his heritage."<sup>11</sup> But the best testimony to the progressive development of this concept is the legislation of Deuteronomy, where the master's power to bequeath his property is definitely restricted and regulated.<sup>12</sup> The parallel development with landed property is obvious.

Property can not inherit property; hence daughters were excluded from the privilege of inheritance, and we have several cases to show that wives were inherited along with other property.<sup>13</sup> No development is discernible during the early period.

<sup>8</sup> Smith, *Kinship and marriage*, p. 68.

<sup>9</sup> 1 Ki. 1:11-13.

<sup>10</sup> 1 Ki. 21:3.

<sup>11</sup> Mic. 2:2.

<sup>12</sup> Dt. 21:15-17.

<sup>13</sup> Gen. 49:3 ff.; 35:22; 2 Sam. 3:7 ff., 12: 8; 16:21 ff.; 1 Ki. 2:13 ff.

The early divine ownership, reflected in the patriarchal promises, is by the prophets expressed as a divine right of inheritance.<sup>14</sup>

Borrowing and lending, and a system of pledges and damages are mentioned in our sources. The first sanction of these forms of economic activity occurs in connection with the exodus where the people are instructed to "ask" of their neighbors costly things and thus "spoil" the Egyptians.<sup>15</sup>

In the C code borrowing receives minute regulation, showing that it was extensively practiced and in such a way as to need regulation. Borrowed animals must be compensated for, if they are injured or die in the hands of the borrower, unless they be hired and the owner is with them.<sup>16</sup> The lender of money is forbidden to be to the borrower "as a creditor."<sup>17</sup> Goods held in trust could be required by the owner if missing, but an ordeal that turned out favorably to the holder exempted him from restitution when there was no witness to prove his guilt.<sup>18</sup> Another rule is shown by the oath whereby the holder of a beast may rid himself of responsibility, if the animal "die, be hurt, or driven away" in secret, but if it be stolen he is liable for its value. If torn in pieces he is guiltless.<sup>19</sup>

In the monarchy men were being sold for debt.<sup>20</sup> By the time of the prophets the custom of taking usury had grown up.<sup>21</sup> And in Deuteronomy usury is specifically forbidden if the borrower is a Hebrew, but sanctioned if practiced upon a foreigner.<sup>22</sup>

A pledge seems to have been the common mode of indicating a debt and of securing repayment. Valuable light upon this practice is afforded by the fact that the only pledge mentioned in the early documents is the only garment a man has and in which he sleeps.<sup>23</sup> This practically proves that it was only the direst necessity that drove a man to borrow and that no system of credit in our modern sense of the term existed at that time: credit was in its incipient and elementary stage. Its complete

<sup>14</sup> Jer. 12:7-10.

<sup>15</sup> Ex. 3:22.

<sup>16</sup> Ex. 22:14-15.

<sup>17</sup> Ex. 22:25.

<sup>18</sup> Ex. 22:7-9.

<sup>19</sup> Ex. 22:10-13.

<sup>20</sup> 2 Ki. 4:1.

<sup>21</sup> Is. 24:2; Jer. 15:10.

<sup>22</sup> Dt. 23:19-20.

<sup>23</sup> Ex. 22:25-27.

development occurs in the latter part of the early period. The pledge is still in vogue in the latest of our sources, side by side with the practice of usury, which undoubtedly was one of the many ways in which the wealthy "ground the faces of the poor," and gathered the "spoil of the poor" into their palaces.<sup>24</sup> To this practice of redemption of pledges, the recurring phrase of Amos, "selling the poor for a pair of shoes," undoubtedly refers.<sup>25</sup> For in this same connection occurs the description of how "they lay themselves down upon clothes laid to pledge by every altar."<sup>26</sup> Though not mentioned in particular, it must have played as large a part in the systematic oppression of the poor and needy as the extortion of usury, for we find in the D code a close regulation of this system of pledges, which shows a high degree of development.<sup>27</sup>

Damages are exacted during this early period in the following cases: loss of time, cost of healing a personal injury, bodily harm to a pregnant woman, and the case when an ox gored another person than its owner or gored some one's else beast.<sup>28</sup> In case of theft, damages varying from the reimbursement of the value up to restitution five-fold is commanded. In case of poverty the thief is to be sold into slavery; and in case of burglary the penalty of death could be inflicted by the owner of the house, if he killed the intruder before the sun was risen.<sup>29</sup>

That the system of damages increased in severity under the financial oppression of the rich is indirectly attested by the general condemnation by the prophets of the practices of the aristocracy; and indeed, not only of their inordinate greed but of their very possession of concentrated wealth itself, a condemnation which pervades all the prophetic writings at the close of the early period.

The concept of trade or commerce does not meet us in the early documents. All that we meet in these are a few scattered references to personal barter and exchange, reflecting almost all the stages through which the primitive evolution of money and trade passed. One of the first "financial" transactions is rather in-

<sup>24</sup> Is. 3:14-15.

<sup>25</sup> Am. 2:6.

<sup>26</sup> Am. 2:8.

<sup>27</sup> Dt. 24:6, 10-13, 17.

<sup>28</sup> Ex. 21:19, 22-36.

<sup>29</sup> Ex. 22:1-8.

teresting. The commodity that changed hands was a birthright, and the price paid for it was a "pottage of lentils."<sup>30</sup> The purchase of Laban's daughters for the price of labor has frequently met us in our study. Jacob's purchase of the "parcel of ground where he had spread his tent," is done by means of a medium called *kesitah*, a term that means "lamb."<sup>31</sup> While it is a disputed point if animals really were a medium of exchange at that time, we have a specific statement that a kid is the purchasing medium of a harlot's favor.<sup>32</sup> The stories of Joseph reflect developed trade in which silver is the circulating medium.

The C code takes the trade in men as a matter of course;<sup>33</sup> so also trade in animals.<sup>34</sup> It is somewhat peculiar that so far as the selling and buying of things is concerned the C code has no regulations.

By the time of the prophets, however, the practices of the trader are noticed. Hosea speaks of the "merchant" and inveighs against him for "using balances of deceit"<sup>35</sup> and for procuring "riches" and "substance."<sup>36</sup> False weights and measures, violence and robbery, are the characteristics of the profit-making trader of the latter part of the early period.<sup>37</sup> Primitive buying and selling had developed into a definite system, apparently unregulated and held in the utter contempt in which trade and all its ways were held by the ancients. The Hebrew's latent commercial capacity was asserting itself, but it received very meagre appreciation in our period.

We find an instrument of sale described first in Jeremiah. At the close of the previous chapter this was noticed. It reveals a development in the methods of commercial transactions which is in strong contrast with the simple practices set forth in the early documents.

It may seem somewhat startling to many that the notion of spoil has one of the richest terminologies in the entire Hebrew Scriptures. Young, in his concordance, distinguishes not less

<sup>30</sup> Gen. 25:29-34. This is the first occurrence, in our sources, of the word *makar*, which means "to sell."

<sup>31</sup> See *Encyclopedie Biblica*, s. v. "Kesitah" for the best explanation.

<sup>32</sup> Gen. 38:17, 20, 23.

<sup>33</sup> Ex. 21:2, 7, 8, 16.

<sup>34</sup> Ex. 21:34-36; 22:1, 4, 7.

<sup>35</sup> Hos. 12:7.

<sup>36</sup> Hos. 12:8.

<sup>37</sup> Am. 8:4-6; Mic. 6:10-12.

than forty-three of these designations by which variations of this one idea of spoil are expressed. If language is "fossil history," as Trench maintains,<sup>38</sup> no argument is needed to convince us that this mode of acquisition of property is a most important method of gaining possession of property. It does not surprise us, therefore, to find that "might versus right" is the principle practiced in the early part of this period with reference to both Hebrew and foreigner, and with respect to the latter throughout the entire preëxilic history. From what was said in regard to captives, this is indeed a necessary consequence. Evidence is not far to seek. In the two oldest codes these sentiments are the fundamental and prevailing elements.<sup>39</sup> Nor are instances, even from the apparently idyllic pastoral period lacking in this respect. Abraham's expulsion of his first-born son was at bottom justified by this principle. So also Jacob's deception of his old father<sup>40</sup> and his profitable breeding experiment<sup>41</sup> are mentioned with tacit approval.

The ideal character of Isaac himself as described by the J writer portrays the elements of this importance of power as well as the instances cited above.<sup>42</sup> While the sons of Jacob are condemned because of exercising the right of spoil against the Shechemites, it is not because they did not have the right to do what they did, but because Jacob feared that he might not be strong enough to continue this policy.<sup>43</sup> This is the reason why their "wrath" and "anger" are cursed, while Jacob himself prides himself upon possessing spoil taken "out of the hand of the Amorites with his sword and with his bow."<sup>44</sup> But one of the clearest illustrations of this concept is the divine command to "spoil the Egyptians," since this points to a conception more closely allied with stealing than with the brute force exercised in war.<sup>45</sup>

The subsequent period of the conquest, presents this right of spoil in such glaring light that little need be said about it. The thirtieth chapter of the first book of Samuel describes the di-

<sup>38</sup> *Trench on words*, p. 23.

<sup>39</sup> Gen. 49. Judg. 5.

<sup>40</sup> Gen. 27:6 ff.

<sup>41</sup> Gen. 30:37 ff.

<sup>42</sup> Gen. 26:16, 20, 21, 29.

<sup>43</sup> Gen. 34:26, 30-31.

<sup>44</sup> Gen. 48:22.

<sup>45</sup> Ex. 3:22.

vine sanction of this practice in words that leave no doubt as to the recognized justice of the principle. Especially the twenty-sixth verse is instructive as portraying the perfect legitimacy and acceptability of this sort of property as gifts to the elders of Israel. No doubt we have here a heightened development of the original right of spoil intensified by the exterminating wars. A slight modification of this warlike concept is witnessed in the ideals of the early prophets,<sup>46</sup> but how deep this goes may be inferred from a prophetic passage in which the joy of the dawn of millenial Israel is described in terms of the joy men feel "when they divide the spoil."<sup>47</sup>

Along with this view of spoil arises the notion of theft. Theft is but a subdivision of spoil, and this spoil was at first as legitimate between the tribes when they fought one another as when they fought their common enemies.<sup>48</sup> In this respect we are able to trace a development even in the principle of the right to spoil. The tracing of the notion of theft will lead us up to it.

The first theft is mentioned in connection with Jacob's departure from Laban.<sup>49</sup> Apparently only the thing taken from a kinsman is counted as theft. Furthermore, it seems that it is only the subordinate or the weaker that is held accountable. Laban could take his daughters from Jacob by force,<sup>50</sup> but the taking of the *teraphim* from Laban was a theft which, had it been discovered, would have brought about the punishment of death.<sup>51</sup> The same penalty is indicated elsewhere.<sup>52</sup> Still these cases are mere conjectures. The definite illustration, which brings out this concept in bold relief, is Achan's theft.<sup>53</sup> This was indeed a theft of the devoted thing, but it shows a definite concept and a working principle operating among the people.<sup>54</sup>

The ideas of spoil, robbery, and theft, must at first have been identical, since spoil includes all of these acts. Spoil was pri-

<sup>46</sup> Mic. 4:4; Is. 2:4.

<sup>47</sup> Is. 9:3, 2-7.

<sup>48</sup> Judg. 12:4-6; 20:37, 44-49; 1 Sam. 25:13, 18-34; 2 Sam. 12:8; 16:21-23.

<sup>49</sup> Gen. 30:33; 31:19, 32, 39.

<sup>50</sup> Gen. 31:31.

<sup>51</sup> Gen. 31:32. This instance probably shows that the concept of theft sometimes arose out of its religious connections.

<sup>52</sup> Gen. 44:9.

<sup>53</sup> Josh. 7:16 ff.

<sup>54</sup> This is in all likelihood the origin of the established regulation of the practice. If so, it would follow the development of the property-notion itself, which begins with the idea of divine ownership.

mary. Theft came next as a differentiation, chiefly because it violated sacred rights of the divinity and then of the kindred group.<sup>55</sup> This is discernible in the cause of Achan, who was punished so severely because he had "troubled" the tribes.<sup>56</sup> How slowly the differentiation worked out we may learn from the story of the Danite settlement.<sup>57</sup> Here the act of theft is regarded as legitimate spoil.<sup>58</sup> Even the eleven hundred shekels stolen by Micah from his mother are theft only as being "taken,"<sup>59</sup> and no punishment is imposed.

The C code furnishes us with further details of this development. Spoil is not mentioned, for by this time it was clearly differentiated from theft, and this was done chiefly because theft was practiced on kinsmen, while spoil was limited more and more to declared enemies.<sup>60</sup> "Thou shalt not steal," is the command.<sup>61</sup> As was noted under "Damages," the punishment meted out for this offense varied from the penalty of death, if the thief broke into the house and was killed in the dark<sup>62</sup> to the selling into slavery, if he was too poor to make restitution: from restitution five-fold to the compensation of the actual value.

We have now only one more step to trace. This is the protest against the practice of spoil where formerly only theft existed, that is, between kinsmen. The consciousness of kind has grown until the financial oppression of the upper class is viewed as true spoil and denounced as such. It is, however, only the "spoiling" of the Hebrew that the prophets condemn, not the practice in general. The later codes show the effects of this prophetic agitation by extended legal limitation on the practice of spoiling a kinsman.<sup>63</sup>

The lack of material in our sources with regard to wages is strange. No regulation exists in the C code. It is not even mentioned there, hence we must be cautious how we interpret the scattered references to wages that purport to be prior to this

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<sup>55</sup> No word is translated as "robbery" in either the J or E or D documents; it is to be found only twice in P throughout the entire Hexateuch of the English authorized version.

<sup>56</sup> Josh. 7:25.

<sup>57</sup> Judg. 17:1-13; 18:1 ff.

<sup>58</sup> Judg. 18:18-25.

<sup>59</sup> Judg. 17:2.

<sup>60</sup> Mic. 2:8.

<sup>61</sup> Ex. 20:15.

<sup>62</sup> Ex. 22:2-3.

<sup>63</sup> Dt. 23:19.

code. It is hardly possible that a wage-earning class could have existed and yet not a word of regulation be found concerning such a class. This is emphasized by the fact that the prominent place of legislation in the C code is actually given to the regulation of the rights in human property. A communistic system of land-holding must have been in vogue that divided the population into two classes, freemen and slaves. When the sturdy yeoman disappeared before the advancing wave of military, royal, and economic oppression, the freeholders were partly reduced to servitude and partly became wage-earners. The few existing references to wages we find in the haggling between Jacob and Laban<sup>64</sup> and between Micah and the Levite,<sup>65</sup> and the stipulation of hire for the servants of King Hiram.<sup>66</sup>

In the prophetic writings we find references to the hireling.<sup>67</sup> The most explicit utterance comes from Jeremiah who exclaims: "Woe unto him . . . . that useth his neighbor's service without wages, and giveth him not for his work."<sup>68</sup> This does not make it clear, however, that these neighbors were a wage-earning class, although such is the most probable explanation.

The Deuteronomic legislation shows the development of this practice and regulates it. "Thou shalt not oppress the hired servant, that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates; in his day shalt thou give him his hire neither shall the sun go down upon it; lest he cry against thee unto Jehovah, and it be a sin unto thee."<sup>69</sup>

In the entire category of the Hebrews' concepts of property there is no more interesting development than the change in their views of wealth. This change involves a shifting from a positive to a negative standpoint. Wealth in the sense of capital was an unknown concept in the earliest stages, when trade was at a minimum. Property in the form of natural goods goes far back of this period and may be eternal. Capital in the modern sense of the word does not exist: it is inconceivable in a strict patriarchate, in which the master is the self-sufficient entity so

<sup>64</sup> Gen. 30:28; 29:15; 31:7, 8, 41.

<sup>65</sup> Judg. 17:10.

<sup>66</sup> 1 Ki. 5:6.

<sup>67</sup> Is. 16:14; 21:16.

<sup>68</sup> Jer. 22:13.

<sup>69</sup> Dt. 24:14-15

far as ownership is concerned.<sup>70</sup> Differentiated ownership is absolutely necessary to profit-making capital.

The patriarchs are viewed as possessors of only natural goods. But the modern definition of property as the "extension of personality" is traceable in the very terminology of the concept. "Abraham was very rich," literally *kabed*, that is, "heavy." In the stories about him wealth is the expression of personal worth and divine favor.<sup>71</sup> This positive attitude does not stop with merely natural goods. It is an exceedingly interesting description of capital goods that the J writer gives us in the stories of Joseph.<sup>72</sup> Here also the attitude is the same.<sup>73</sup> Joseph's plan is the expression of divine wisdom. The account of the spoiling of the Egyptians, as we noticed, describes the success of the people in this respect as a distinctive mark of divine favor.<sup>74</sup>

If we follow this early concept, in its negative aspect, an instructive fact meets us, namely, the idea of poverty, considered in the strict sense of the term as a lack of property. This idea nowhere finds expression in the early documents. The concept of poverty in its earliest form is rather that of one ill-treated and generally miserable,<sup>75</sup> a victim of social distress rather than of economic deficiency.

In the C code we have practically the beginning of the purely economic concept of poverty. The three original words used to designate the "poor,"<sup>76</sup> occur for the first time, so far as our sources are concerned, in this code with one single exception.<sup>77</sup> The importance of this remarkable fact can scarcely be overestimated. It proves beyond the shadow of a doubt that economic conditions had long been in operation, until not only an actual economic differentiation had taken place in society, but also that the distinction between social distress and economic deficiency had begun to crystallize in the consciousness of the people.<sup>78</sup> In other words, the C code represents to us the inception of the no-

<sup>70</sup> See Lafargue, *Evolution of property*, p. 1 ff.

<sup>71</sup> Cp. Chap. 1.

<sup>72</sup> Gen. 47:13-26.

<sup>73</sup> Gen. 41:38-39.

<sup>74</sup> Ex. 11:2-3.

<sup>75</sup> Gen. 16:6; 31:50; Judg. 19:24-25.

<sup>76</sup> These words are, *ani*, *dal*, *ebyon*.

<sup>77</sup> *Dal* occurs once before, Gen. 41:19, but the other terms are introduced afterwards.

<sup>78</sup> Ex. 23:11.

tion of wealth as capital goods.<sup>79</sup> But it is only a beginning; the old notion of poverty as a general disability is still predominant.<sup>80</sup>

The general attitude towards wealth reflected in this code is rather difficult to determine. The impression is of restrictions only in case of the more flagrant abuses, while the theory is a sort of *laissez faire*, for which, however, the obscurity of the concept may be largely responsible. On the whole, the attitude is favorable to wealth, as was noticed in the regulation for restitution and theft,<sup>81</sup> and in the definition of slave.<sup>82</sup>

With the rise of the monarchy, militarism, and a landed aristocracy the attitude toward wealth changes. Traces of this are found in the case of Nabal,<sup>83</sup> and in the parable of the prophet Nathan.<sup>84</sup> Here the concept of poverty is clear and concise, and the attitude toward the rich less favorable. To what extent the antagonism against oppressive wealth has grown is indicated by the king's condemnation of his own act, though, of course, unknown to himself.<sup>85</sup>

The attitude of the preëxilic prophets, however, comes to us almost as a shock. Wealth is practically synonymous with oppression. "The rich men are full of violence," and "treasures of wickedness" constitute their possessions, which were accumulated by "wicked balances and with the bag of deceitful weights."<sup>86</sup> On nearly every page of the prophetic writings, we find evidence that in the mad scramble for wealth humanity is trampled under foot and violence runs wild.<sup>87</sup> The most striking feature in this concept is the implacable hostility towards the representatives of wealth, apparently without exception, implied throughout these writings. And the vehemence by which these sentiments are expressed is such as to make many a radical socialist of the present day seem rather moderate.

This negative attitude towards wealth is the most remarkable

<sup>79</sup> Ex. 22:25.

<sup>80</sup> Ex. 23:3, 6, 7.

<sup>81</sup> Ex. 21:22 ff.; 22:1 ff.

<sup>82</sup> Ex. 21:21.

<sup>83</sup> 1 Sam. 25:2 ff.

<sup>84</sup> 2 Sam. 12:1-6.

<sup>85</sup> 2 Sam. 12:5-6.

<sup>86</sup> Mic. 6:10-12.

<sup>87</sup> Am. 8:4-6; 2:6-8; 3:10; 5:11-12; 6:4-6; Mic. 2:2, 8-9; 3:3, 10-11; 7:2-3; Is. 1:15-17; 2:7; 3:14-15; 5:8-12; Jer. 2:34; 7:6; 17:11; Hos. 5:10; 12:7-8.

as well as the most important fact in the concepts of property among the early Hebrews, especially because it reached its climax at the close of this early period which we are studying. What an enormous development is manifested in this complete change of front from the attitude of the J author, to whom the possession of wealth is a distinguishing feature of divine favor and personal righteousness, to the diametrically opposite view of the preëxilic prophets, to whom the possession of wealth is a synonym for all that is evil and vile, the essence of wickedness. The latter view is the significant characteristic of the writings of the Hebrew prophets and makes them unique in the annals of antiquity.<sup>88</sup> It may be partly explained on the ground that the early prophets were economic conservatives, champions of the older and simpler economic and social life as against the radical changes in social position and economic conditions consequent upon the peace and prosperity of the period.

The immediate result of this development can be traced in the Deuteronomic legislation and the final outcome in the closing chapters of Hebrew national history. But the ultimate results are to be seen in the characteristics which have made the Hebrew what he became after his nation ceased to exist, what some have considered him ever since, a "money-grabber." The voice of the eighth century prophets made him the ethical and religious voice of God to many peoples, even more than a money-lender and financier.

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<sup>88</sup> The intimate bearing of this development upon present-day problems is seen in the intense modern agitation against capitalistic oppression.

## CHAPTER VII

### THE RELATION OF THE CONCEPTS OF PROPERTY TO SOCIAL LIFE

#### 1. *The distinction between the function of ownership and the idea of property*

This distinction must be kept in mind continually if “a critical understanding of the *idea* of property” is to be gained. There is not a vestige of a doubt that Morgan was right in thinking that when the searchlight of science had uncovered this fundamental concept of property, “the most remarkable portion of the mental history of mankind” would be revealed.

The fashion of investigators in this field has been to seek the origin of the institution of property in the society of animals. No distinction whatever is made between the unconscious fact and the conscious function. As an apt illustration of this confusion the views of Letourneau, a brilliant writer on this subject, may be cited.<sup>1</sup> To this writer a society of ants represents not only the specialized activities of civilized man, such as agriculture, architecture, cattle-keeping, and slavery, but it even surpasses human society so far that “ants, whilst behaving like men have never allowed themselves the abuses of force to which men are accustomed.”<sup>2</sup> To such extremes has this argument been carried that one critic calls attention to the fact that these writers speak of an institution of property before any society existed.<sup>3</sup> The difficulty arises from the confusion of the economic function and the mental concept, the practical and conceptual elements in the institution of property, and serves as a striking example of what James calls “the psychologist’s fallacy”<sup>4</sup> as operating

<sup>1</sup> Letourneau, *Property, its origin and development*.

<sup>2</sup> *Ibid.*, pp. 12-13, 89. Cf. also Romanes, *Animal intelligence*, pp. 31-142.

<sup>3</sup> “Sa méthode comparative a pour objet de donner au concept de propriété un extension si vaste qu’on puisse déjà parler de propriété quand il n’y pas de société.” *L’Anné Sociologique*, Vol. 10, p. 446; a review of R. Petrucci’s *Les origines naturelle de la propriété*.

<sup>4</sup> *Psychology*, Vol. 1, pp. 196-198. Note two variations of this fallacy pointed out.

in the field of sociology, namely, the confusion of the student and of the fact under investigation and the assumption of an equal degree of consciousness in the two.

Property as an economic fact can be attributed to the society of animals. So that we can talk about an animal "owning" his nest and the supply of food he has gathered. But in this sense does not the plant "own" the soil into which it has struck its roots and from which it draws its sustenance? Again, does not the sun itself "own" the planets which are compelled to circle their endless orbits in obedience to the sun's "economic function" of gravity? Property in its purely biological aspect involves the one as well as the other of these facts, and as a mere economic fact it strikes its root far beneath the animal kingdom. As a biological function we must trace the origin of property from these sources and take into account not only the society of animals but man's animal existence in his struggle for survival. Biologically, therefore, man "owns" in the same sense as the animal "owns" whatever he can get hold of and is able to retain until its utilities are exploited to his satisfaction.<sup>5</sup> Ownership in this sense is confined to the elements of food-getting and the satisfaction of the impulse of sex. We are fairly well assured that it was gastric juice rather than brain-phosphor which gave the reaction to the mechanical event of private property.<sup>6</sup> The sensuous satisfaction of the savage was his best guarantee of ownership. Still not all the data in the world on the biological function of ownership in this sense are capable of explaining the institution of property as we know it. In order to explain this, another element, the consciousness of ownership as an abstract right, is absolutely essential.

This element, the consciousness of ownership as an abstract right, is uniformly experienced by the members of the entire society and sanctioned by it. Here is the question of supreme importance: Are the animal and the savage conscious of such psychic reflex as a notion of right over the morsel of food or over the mate which he has torn from a weaker being or an enemy? Does he leave it in plain sight depending for its safety upon the acknowledged fact that he "owns" it? And further does the

<sup>5</sup> See Keller, *Homeric Society*, p. 190.

<sup>6</sup> The amoeba shows food-taking reactions "only in response to edible substances." Washburn, *The animal mind*, p. 41.

entire group sanction this right so as to punish violations of the same? When these questions are answered in the affirmative the institution of property can be said to exist, when they must be answered in the negative we can not speak of that institution. This consciousness of a property-right is nothing else than the idea or concept of property. When this is present, the conditions above noted are fulfilled. For when such a concept is formed, customs supporting it grow up *pari passu* with its development and these are eventually transformed into law. Hence this concept or consciousness is the one essential in the institution of property. So fundamental is this concept that the witty Linguet tells Montesquieu, "L'esprit des lois, c'est l'esprit de la propriété."<sup>7</sup> Another scarcely less celebrated writer goes even further when he says: "Where there is no property there is no injustice."<sup>8</sup> We are reminded of the words of a later student in this field, "This then is the key to the history of property as an institution,—the growth of knowledge."<sup>9</sup>

## 2. *The origin of the property-concept is social and rests on taboo.*

Clearly enough this concept, presenting the most difficult problems with which the human mind is called upon to grapple, cannot be attributed to animal, or to savage society. All that we can claim to know about this phenomenon in such a realm is that of conscious function. But as the conscious function of mating among animals never developed into an "institution of marriage" in animal society, even so the owning function never developed into an institution of property. Individual consciousness alone, even though it be capable of conceiving the right of owning, is inadequate to explain this concept. An individual might claim the right, but what would insure the respect for his claim as a right? What would bring about the universal sanction?<sup>10</sup> For this result we must have something more than individual consciousness, we must have a group of individuals with a consciousness of kind and also a consciousness of their like-mindedness in association. It is precisely at this point where the organism, social-contract-imitation-and suggestion-theories of society break down in the search for the origin of the institution of

<sup>7</sup> Cited by Lafargue, *Evolution of property*, p. 58.

<sup>8</sup> Locke, *Essay on human understanding*, Book 4, Ch. 3, Sec. 18.

<sup>9</sup> Jenks, *History of politics*, p. 100.

<sup>10</sup> Cp. Maine, *Ancient law*, pp. 243 ff.

property. If they contained all the truth, individual consciousness alone would suffice to explain every phase of the facts, but they leave out the very important element which alone can account for the concept of property, namely, that likemindedness which, being neither instinctive nor rational but "formal" or traditional in its nature, is based upon unquestioning acceptance of customary actions and ideas without discussion, and therefore alone explains the universal sanction of the right of property. Hence we are forced to commit ourself at the outset to the theory of "formal" likemindedness, if we are to obtain any light at all upon the origin of this institution.

Discarding the broad field of genetic psychology, the question of origin of the concept of property is narrowed to the precise point at which we find the idea of property appearing in the development of this formal likemindedness in human association. Fortunately sociology has advanced sufficiently to establish a certain order in the rise and development of the ideas involved in the different social institutions, whether these be religious, economic, or political. This generally accepted order is well summarized by Professor Giddings in his "primary, secondary, and tertiary traditions."<sup>11</sup> To the primary tradition belong the initial economic, juridical, and political notions; to the secondary, the animistic, or personal, and the religious ideas; and to the tertiary traditions belong conceptual thought, metaphysical philosophy, and science. That these groups of notions overlap and interpenetrate each other need not be stated, though the tertiary traditions are confined to civilized society.

Quite naturally the student searching for the origin of property ideas, at once concludes that they are to be found in the primary traditions. But this is precisely what we are guarding against by the distinction between the function and the concept. For these primary traditions, economic, juridical, and political, embrace the entire conscious function, irrespective of the mental content. Again, the basis of these traditions is force, not right. And no amount of force is capable of creating mental structure. The primary traditions furnish the soil but not the actual germ of the concept of property.<sup>12</sup>

For this potential idea we must turn to the secondary tradi-

<sup>11</sup> *Elements of sociology*, p. 147.

<sup>12</sup> See pp. 7-8, footnotes.

tions. The first notion we meet there is the idea of personality. This is the germ of the property-concept. Giddings defines this idea as "the sum of man's beliefs about himself and other beings as consisting of body and soul."<sup>13</sup> Does it really need argument to show that "economics" would be unable to produce an institution of property without the idea of personality? Probably the best definition of property ever given is that, "Property is the extension of personality."<sup>14</sup> But we must take a further step. In this group of secondary traditions we find the religious ideas. Indeed, animism, or the notion of personality, is in its rise always of a religious or, if preferred, superstitious, nature. This is the vitalizing element in the notion of personality that is ultimately responsible for the rise of such a notion in human society as a property-right.

We have only to trace the different steps in the development of these religious ideas, so far as known to us, and to establish the connection between these ideas and the function of ownership, and the theoretical part of our task is done. In this sphere we have in rising genetic order fetich-worship, totemism, and the taboo. Fetichism is the lowest and most primitive of all known superstitions, apparently utterly irrational. Totemism is the advanced conception of a sacred ancestry, but its principle is found in the function of kinship and consanguinity, and sustains only remote relation, if any at all, to economic factors. The taboo on the other hand, takes definite cognizance of personality, both in its protective and prohibitive function and in its mental content. Furthermore it deals explicitly with objects of economic value. This is positively the first point in the development of the formal likemindedness where we can demonstrate the actual presence of a concept which beyond all question involves the universal sanction. Since this is also precisely the point at which the vital connection between economic function and the mental concept of unchallenged right is made, the working hypothesis is complete: Taboo is the first embodiment of the concept of property and the origin of the institution of property. Anticipating the conclusion from concrete data, the most powerful and conclusive proof that can possibly be given for the fundamental truth of

<sup>13</sup> Giddings, *Elements of sociology*, p. 149.

<sup>14</sup> See Underwood's admirable treatment of this subject in his definition of ownership in *Distribution of ownership*, pp. 10-15.

this statement is the simple fact that it has remained such to the present day. The age-long struggle of society in the rationalization and socialization of the institution of property only reveals the dominance of the taboo in the establishment of the property-concept in human affairs.

This is the conclusion drawn from the study of the development of the concepts of property among the Hebrews. It is the only rational explanation of the clear and concise ideas of the divine property-right, which we found to be the primary as well as the dominating principle in the development of the concept of property. It also furnishes us with a key to the well-known fact that the best proof of its primitivity that we possess in social institutions lies in the prevalence and dependence upon ceremonial rites and theocratic ideas. The student finds that, in spite of the advanced legalism of the Hammurabic code, enough survivals of these ideas are to be found in it to prove the religious origin of the concept of property.<sup>15</sup> But probably the best proof of the universality of this origin of the concept of property is the conclusion of a student of this same idea among the Romans. Fustel de Coulanges in his *Ancient city* thus sums up the evidences of the origin of the property concept among the makers of the merciless "Twelve tables": "In the greater number of primitive societies the right of property was established by religion;"<sup>16</sup> and again: "Religion and not laws first guaranteed the right of property."<sup>17</sup>

There are certain supplementary considerations supporting the taboo origin of property. If the origin of the institution of property is to be found in taboo, what of the apparently opposite theories that this institution had its rise in the social practices of seizure by force, habitual use, or production? The answer is that these theories instead of contradicting the taboo origin, simply pave the way for it and lead up to it as its inevitable consequence, because these theories have explored the rise of the primary traditions, or the origin of the economic function only. Seizure by force is undoubtedly the primary mode of acquiring property. But this does not involve any right. Its basis is power *versus*

<sup>15</sup> See Code of Hammurabi, Paragraphs 131, 132, pertaining to the sacred oath and the ordeal.

<sup>16</sup> P. 85.

<sup>17</sup> P. 86.

right, for these two elements are mutually exclusive. It is the rise and the recognition on the part of the community of a right opposed and superior to power which constitutes the property-concept. The phrase "right of the stronger" is a contradiction of terms. The property-right is the mental force which established the "owner" *versus* the "stronger."

In like manner habitual use alone shows us another phase of the original function of ownership which does not need to be even a conscious function, much less involve any mental content. That the production of a thing should involve the concept of ownership can not be seriously entertained, since we are aware of a general rule of early society that "those who work cannot own and those who own cannot work."<sup>18</sup> The property-right based upon production is the great ideal of the property concept; its *terminus ad quem* but not its *terminus a quo*.

These different theories contain more or less truth, however, in so far as they answer the question "how," that is, setting forth the method of the incipient practice of the function of ownership. The point in which they fall short is that they do not tell us the "what" of the concept of property. To answer this question we must have animism and the notion of personality. And this personality must be acknowledged by the entire community with a sacred significance. Then, when these practices become pervaded by the superstitious sanction we have the institution complete but not before. To use a figure, these practices are the material form requiring the breath of the notion of personality to make them living institutions. This is precisely what we have in the taboo.

In the writings of the majority of recent students of this phase of sociological inquiry we meet a somewhat instinctive perception of the intimate relation between the taboo and the notion of property. The differences of opinion appear very wide, ranging from the view that the taboo itself is the result of the institution of property<sup>19</sup> to the view that the notion of property is of a very recent origin, far removed and even opposed to the original religious ideas.<sup>20</sup> The point of value in this divergence of opinion

<sup>18</sup> Veblen, *The beginnings of ownership*, *American Journal of Sociology*, Vol. 4, p. 360.

<sup>19</sup> Lafargue, *Evolution of property*, pp. 17 ff.

<sup>20</sup> Smith, *Religion of the Semites*, pp. 140 ff.

is the substantial agreement upon two facts: first, the fundamental importance of the taboo and of the institution of property; and second, the intimate and vital union of the two. In these two essentials the most conflicting extremes touch each other and fuse into one. Failure to distinguish between function and concept is responsible for the divergence.

The demand at this point of our inquiry naturally would be to trace the rise of the mental content of the property-concept to its origin in the same way as we have indicated the rise of the function of ownership. But this would take us into the heart of the problem of the origin of religious ideas,<sup>21</sup> which is obviously altogether too far afield. Therefore we are forced to take the taboo as the fundamental historical fact for our purposes. Two elements are distinguished in this concept, the notion of a magical "charge" inherent in things themselves,<sup>22</sup> and then the notion of a deity whose will is to be obeyed.<sup>23</sup> The former element plainly shows a relation to fetish-worship, while the latter sustains more of a relation to the totemistic notions. Instead of viewing these two elements as different varieties of the taboo, we will not go far wrong if we take them to be logical steps in the development of the system of taboo. The view here entertained is that the taboo is the outcome of man's innate capacity for superstition, the "awe of the unknown," for the expression of which environmental phenomena can show a series of rising gradations, but for the content of which we must posit man's psychic activity.<sup>24</sup>

<sup>21</sup> Compare with the familiar theories of Spencer, Müller, Tiele, Smith, and others, the view held by King, who traces the origin of the "religious attitude" to a "consciousness of value," bearing directly upon the property-concept. *Development of religion*, pp. 44 ff.

<sup>22</sup> "At an early period the notion [of taboo] has a magical content: the tabooed individual or object is possessed of a certain magical awfulness or sanctity, is pervaded with a dangerous contaminating influence, is charged with a deadly electricity which may be automatically set free by physical contact." Webster, "The influence of superstition on the evolution of the property-right," *American Journal of Sociology*, Vol. 15, p. 795.

<sup>23</sup> "In somewhat advanced states of culture the penalty for breaking the taboo is commonly regarded as the vengeance of an outraged deity, who visits with sickness, disease or death the guilty individual." *Ibid.*, p. 795.

<sup>24</sup> "Like all questions of the derivation of institutions it is essentially a question of folk-psychology, not of mechanical fact." *American Journal of Sociology*, Vol. 4, pp. 354-5. "When these [mental forces] are once developed, they lead an independent existence and constitute a superorganic or psychical factor as distinguished from the purely physical or the biological factors." "The Economic Interpretation of History," I. A. Loos, *American Economic Association*, Series 3, Vol. 3, p. 387. "There is no property until foresight begins," Underwood, *Distribution of property*, p. 23. Cf. James, *Psychology*, Vol. 1, pp. 8-9, the relation between preision and mentality.

The taboo, as it is here used, is the developed system in which both the magical and the deistic ideas are present.

*3. Application or applicability of the taboo theory of the origin of property to the social conditions of the life of the Hebrews*

The theory of the taboo origin of property is implied in the Hebrew property-concept. It is a direct result of the religious phase of the social life. Its immediate basis is the consciousness of kind. Yahweh reveals himself in the very earliest of the documents, that of "the little Book of the Covenant" as an owner, speaking in definite terms of proprietary right, "the first-born . . . are mine." This assertion could not by any means be an economic or natural right since the subject is the idea existing in the likeminded consciousness of his worshippers.<sup>25</sup> This fact therefore proves to us the social nature of the first property-right. But additional proofs of this meet us in the forms which the expression of their worship assumed. These forms were the conscious articulation of their community life expressed in terms of supernatural content. In their worship two rites stand out in striking relief. These are the sacrifice and the ban or curse. Around these the social life of the people centered. It is in connection with these customs that we are able to trace the property-notions of the people. It is therefore necessary to understand the principle upon which these customs depend. The ultimate principle of the customs is readily seen to be the notion of holiness attributed to the tribal deity. In this one word "holiness" we have summed up the chief mental content around which were arranged the ideas involved in their system of religious observances. Now, we find that this central idea of holiness contains exactly the same elements as the taboo. Even more than this, in the rules of this holiness we see the actual taboo in operation. We have not only the developed element of a personal deity, but we have in the early stories the primary notion of an inherent magical content in things themselves. Therefore we are forced to draw the conclusion that the two notions of holiness and taboo are in the last analysis inseparable or identical.<sup>26</sup> Can

<sup>25</sup> Of the reality expressed by this idea we are not concerned in this inquiry of a psychosocial nature.

<sup>26</sup> "The rules of Semitic holiness show clear marks of their origin in a system of taboo. . . . It is impossible to separate the Semitic doctrine of holiness and uncleanness from the system of taboo." Smith, *Religion of the Semites*, pp. 450, 452.

a clearer case of taboo than the fruit of the tree of knowledge of good and evil possibly be cited? And is there in all literature an illustration of the breaking of a taboo conceived to involve more far-reaching consequences than this one? It played, indeed, a striking part in the development of Hebrew ideas, and upon none of these does it bear with greater force than upon the concept of property. For the "fall of man" was a breaking of the divine right of property expressed by the taboo, and this principle remains an abiding constant, working itself out in practical life in the development traced in the concept of the divine property-right. The ceremonies of sacrifice, the curse, and the blood-revenge, all depend upon the divine right to which the worshipper owes acknowledgment. For all of these were distinctly religious duties with specific reference to the deity and hence sacred.

To understand the real meaning of the divine property-right we need only call to mind that in the search for the origin of the notion of property it is not the things owned which give us the clue, but it is the answer to the question, "Who was the first owner?" that will take us to our goal, for it is seen at a glance that the owner is the exponent of the concept of property. Among the Hebrews we find Yahweh the first owner with an absolute right. The mode of expression of this right was the taboo involving the idea of holiness in the two forms we have noticed, intrinsic magic and divine will. At first Yahweh's right was exercised only for his own sake, later this right was utilized by the prophets in the favor of the poor and needy.

The facts will be quite clear when we remember that at this early period no nice distinctions were held between kindred notions, such as we have in our text-books of to-day. We are forced to realize a sort of nebular chaos in primitive mental life, in which superstition suffused every relation with the rays of sanctity, giving a religious significance to every phase of experience. "There was no separation between the spheres of religion and ordinary life. Every social act had a reference to the gods as well as to man, for the social body was not made up of men only but of gods and men."<sup>27</sup> It is in society thus composed that we find the idea that the tribal god was the first real owner. This he

<sup>27</sup> Smith, *Religion of the Semites*, p. 30. See *Ibid.*, Lecture 2, "The nature of the religious community and the relation of the gods to their worshippers," pp. 28 ff.

was because of the universal respect for his taboo.<sup>28</sup> Appeal was made to him by means of the oath and the ordeal. He was the great executive, whose mandates were carried out by concerted action.<sup>29</sup>

Here is the basis for the notion of theft which is but the negative phase of the property-concept.<sup>30</sup> Such religious origin explains the universal sanction of the right to own, or the respect of property even by those whose self-preservation would urge a violation of it.<sup>31</sup> This would seem to be the ultimate answer to Sir Henry Maine's question as to the creation of this respect,<sup>32</sup> for in the god-idea we have the most indisputable evidence of the consciousness of kind known to early society and as we now have seen the property-concept is inseparably bound up with it.

#### *4. The connection between this idea of a divine owner with the things owned and the reciprocal influence of the one upon the other.*

This interdependence or reciprocal influence can now be shown on a basis of our foregoing analysis. If it be true that "nothing could more clearly have been property than articles given by the community to its favorite leaders,"<sup>33</sup> we are forced to add, except the articles given by the community to its deity. From the standpoint of logic no escape can be found from this conclusion, or from the synthesis of the facts of early Hebrew history. The monumental institution of the well-nigh universal ceremony of sacrifice among practically all primitive peoples proves the fundamental nature of the notion of divine ownership. We know the elaborate system of this institution among the Hebrews well enough to preclude the necessity of enlarging upon it.<sup>34</sup> Every

28 Smith, *op. cit.*, p. 456.

29 *Cp.* the inscription on the Mesha stone, lines 14-18.

30 "In the oldest type of society impious acts or breaches of taboo are the only offenses treated as crimes; *c. g.*, there is no such crime as theft, but a man can save his property by placing it under taboo, when it becomes an act of impiety to touch it." Smith, *op. cit.*, p. 163. See also footnote same page.

31 *Cp.* Loria, *Economic foundations of society*, p. 19, footnote.

32 *Ancient law*, p. 243.

33 Giddings, *Principles of sociology*, p. 242.

34 With respect to the explanation of the sacrificial theory we are forced to take issue with the late W. Robertson Smith whose very refutation of the gift theory of sacrifice fairly bristles with facts which prove the powerful influence of ideas of property in the sacrificial system. In point of fact, he proves their presence by the controlling influence which he ascribes as a veritable "swallowing up" of all earlier formulas for the relations of persons and things (*Religion of the Semites*, p. 391) to

sacrifice is a conclusive acknowledgment of the right which the votary voluntarily accords the being to whom it is offered. From the offering at the grave of ancestors to the spirits of the dead, shown in early animism, to the elaborate sacrificial system of the Hebrews, this principle ruled. When this right is absent or unacknowledged, evidently there will be no sacrifice.<sup>35</sup>

However, Yahweh's right to the firstborn and to the sacrificial animal is not the earliest conception of his right, for the first-born child could be redeemed. We see this also in the later modification of this right by the eighth century prophets, when this idea breaks down. By the biological law which causes the characteristic latest acquired to be lost first, we are led to believe that sacrifice of children to Yahweh was an imposition upon the pre-Mosaic religion contributed by the association with peoples who practiced it. The terrible guerilla warfare of the conquest and the period of the Judges did not tend to create respect for human life. The tribes fought each other with the same zeal that they fought their common enemies. Established in the land and in close contact with the Canaanites, they gradually learned to recognize their own identity as a people. In other words, they developed a deeper consciousness of kind.<sup>36</sup> The very core of this was their common worship. This consciousness reacted against every practice interfering with the welfare of the people as a whole. Sacrifice was questioned as a meritorious rite. The destruction of Hebrew children was summarily condemned. Animal sacrifice itself and even the sacrifice of foodstuff is deprecated.

such an extent that "the introduction of the ideas of property into the relation between men and their gods seems to have been one of the most fatal aberrations in the development of ancient religion" (p. 395). Had these ideas not been present in the system of taboo — this living nexus of nascent ideas — they would not have been able immediately upon their appearance to "play a leading part both in religion and social life" (p. 390). For a full treatment of Professor Smith's view respecting this problem, see Lectures 4, p. 140; 11, p. 388; and "Additional Note B," p. 446, in the work cited.

<sup>35</sup> Cp. Wundt's chapter on "Das Tabu und der Ursprung der Sühnezeremonie," in his *Völkerpsychologie, Mythus, und Religion, Zweiter Band, Zweiter Teil*, pp. 300-364.

<sup>36</sup> A picture of such a process in a religious community is afforded in Dr. Gillin's sociological interpretation of the Dunkers. Aside from the absence of warfare the principles here outlined offer many parallels to what the development among the Hebrews inevitably must have been. "Proximity emphasized unlikeness that distance hid from view. But becoming aware of the fact that they were unlike the other social elements, the Dunkers became conscious of a social likeness among themselves. This contact with others, thus, developed a consciousness of kind." *The Dunkers*, p. 108. Note especially the conclusion, pp. 226-232.

Yahweh is no longer the tribal deity. He is the national God of Israel who has established his place above all the nations. Every votary of his is valuable, sacred. The poor, the needy, and the oppressed, these are also his people. Whatever militates against any class of Yahweh's people militates against him. The wealthy oppressors have revolted from him. They oppress the poor, Yahweh's people. And worst of all they have robbed the people of their common inheritance, Yahweh's land. Hence they, the wealthy aristocracy, are Yahweh's enemies, and the poor and needy are the "righteous," his friends. Such are the results of this consciousness of kind among the Hebrews and its influence upon the concept of property.

Over against this decrease of emphasis on the divine right to native sacrifice we saw the right to the captive and the devoted increase during the period of our study. This opposite development would seem to show a deeper origin for the right to the captive and cursed than the sacrificial system. The explanation of this is not difficult. Sacrifice was the voluntary expression of the votary's recognition of the right of the deity; a right, moreover, which we noticed as greatly modified by the time we have it recorded. Then again this right to the sacrifice involved only the god and the worshipper. No question of the relative right between man and man entered in this system. In the matter of the divine right to the captive, the devoted, and the spoil we enter into a different and more primitive situation. Here we have the entrance of the idea that man may share in the deity's rights to these things. For let this be remembered, that while the first owner was the deity, no deity ever exercised such a function. The function arose biologically in the struggle for existence between living beings and nature, and then between living beings themselves. So when we come to search for the first glimmerings of the right to property between man and man we must find it where man conceives that it is his privilege to share in Yahweh's right to property.

The bridge over which the Hebrew was enabled to pass from the conception that all things belonged to Yahweh to the conception that he could share with his god certain goods is to be found in the second great ceremonial institution among the Hebrews, the ban or curse. This curse in the name of the god is in reality

the basis of the almost universal practice among primitive peoples of the blood-revenge. It is easily seen to be also the primary element in the taboo, conveying invincible, utter destruction to its victim, either by its own inherent deathly magic or at the bidding of an outraged deity. The fate of Uzza who was struck dead because of merely touching the ark of God with the good intention of saving it from falling is a case in point.<sup>37</sup> The ark was holy, that is, taboo. To break this meant instant death. The two sons of Aaron struck dead for an unintentional break of a similar taboo is another instance.<sup>38</sup> And at the giving of the law the express command given is "whosoever toucheth the mount shall surely be put to death."<sup>39</sup> Other striking instances are found throughout the period, but these are sufficient to show the nature of this primary element in the taboo, the deadly electricity, as it were, of intrinsic magical holiness.

It is to be noted, however, that these cases show immediate supernatural interference. The curse as observed in operation during the early period of the invasion is exercised by man in the name of Yahweh, that is, by human instrumentality. Two elements enter into this. It is not only pronounced by man, but it is also carried out by man. Here is precisely the point where man began to share the divine right. He who could pronounce the ban in the name of Yahweh shared the divine right in so far as he could justify his action to the community. Hence we find it used by the judges, prophets, and kings against their enemies. It is difficult for us to grasp its enormous importance; the right, however, was never questioned. No sooner was it placed than its efficacy was proved. It brought about concerted action, as no other known custom was able to do, even to the extermination of an entire tribe of Israel at a most tremendous sacrifice.<sup>40</sup> If placed upon an individual or a nation, a native, or a captive, living beings or inanimate objects, its effect was the same, utter destruction in so far as it lay in the power of the people to accomplish such a result. No right could possibly be more absolute than this one. We know of no other method by which a thing or a person could be more effectively claimed as the absolute and

<sup>37</sup> 2 Sam. 6:6-7.

<sup>38</sup> Lev. 10:2.

<sup>39</sup> Ex. 19:12.

<sup>40</sup> Judg. 20:1 ff.

exclusive possession of Yahweh than this ban or sacred taboo. In so far, therefore, as man could assert it over against his fellows, this right rather than brute force, protected his possessions. This arose for the simple reason that the universal sanction necessarily outweighs individual interest, as is shown in the case of the defeat of King Saul in the face of the attack of the prophet Samuel in the name of Yahweh.<sup>41</sup>

We have an important development to notice in this *herem*, or ban. While in the early period it means only destruction, in a later period it means a separation for actual service of the sanctuary. As such, this Hebrew word is also translated "consecrate" or "devote."<sup>42</sup> Thus the original deadly influence of the inherent magical holiness of things has, under the influence of an intensified consciousness of kind, passed into a conception of divine right of control for the purpose of active service. The right is as binding and as absolute as ever, but it does not always involve utter destruction but rather life-long service to the deity. This explains the difficulty in the case of Jephthah's daughter. Whether she was actually sacrificed as a burnt-offering<sup>43</sup> or not is immaterial; she was devoted to Yahweh whether in death on the altar or in sacred service, and this conception made her taboo to men.<sup>44</sup> Thus, this custom explains the "vows" as being nothing else than the modification of the original divine right of taboo.

We have now traced the divine right as far back as we can, and, in order to come to the purely "economic" phase of our subject, we must direct our attention to the connection of taboo with the fact of actual possession.

*5. The function of ownership in early society leavened by the mental concept of a divine right thereby creating the concept of personal property including the private ownership of persons and things.*

Three theories of the function of ownership were mentioned, seizure, use, and production. Which of these is the primary? The sacred custom of the ban renders the answer. It was the captive taken in war. The right of Yahweh to the cap-

<sup>41</sup> 1 Sam. 15:23.

<sup>42</sup> Josh. 6:18; Mic. 4:13.

<sup>43</sup> Judg. 11:31.

<sup>44</sup> Judg. 11:39.

tive actually continued and even increased during our period. It is upon this practice of capture by force or "adverse possession"<sup>45</sup> that the divine right first sets its seal. The wars of Israel were all holy wars. The captives were the possession of Yahweh, for they were under his curse or taboo. There is nothing in our study which is more conclusive and well attested than this. It is the subject-matter of the entire historical part of the early records. The total absence of any effort upon the basis of this divine right to soften the light thrown upon the atrocious practices of the Hebrews is eloquent. So deeply ingrained is this original divine right to the hapless captives of war that their destruction is the criterion of faithfulness applied by Yahweh to his people;<sup>46</sup> and so powerful is it that when King Saul fails in its enforcement the old prophet himself wields the weapon of destruction in defense of the divine right.<sup>47</sup>

Acquisition by capture or adverse possession therefore, is the biological fact and the economic function, into which the mental content of a sacred sanction of a divine right breathed the spirit of life, and henceforth the more or less unconscious function became a living institution of property. Its expression was the taboo. The early codes testify to this condition for without their theocratic power they would mean less than nothing, because the divine will is their only basis and the divine power their only support. That this was in reality only the expression of the consciousness of kind, of concerted will, volition, and action in terms of religion, we know but this knowledge was not in the possession of society three thousand years ago.<sup>48</sup> Man was the interested actor, and, though he speculated as little about his ideas concerning the deity as he did about the fact that he had any ideas at all, the notions were there to stay and to leaven further the economic functions of man into rational in-

<sup>45</sup> See Blackstone, Book 2, Ch. 1.

<sup>46</sup> 1 Sam. 15:19 ff.

<sup>47</sup> *Ibid.*, 15:33.

<sup>48</sup> This view does not invalidate the "law which may be regarded as practically universal, that the religious conceptions of a people are expressed in forms which are modelled, in large degree, on those political and social institutions which the economical conditions of their situation have produced" (Barton, *Semitic origins*, p. 82), but it exposes the half-truth of the mechanical economic interpretation of society by emphasizing the essence of mental content without which it is an absurdity to talk of an "institution" in human society. According to biology, animal society has been in the field of experimenting with "the economic condition of their situation" ages before man. Where are their religious conceptions?

stitutions. The divine property-right to the captive, the devoted, and the spoil, became exercised by human agency in communion with the deity, and so became the basis of man's property-right.

It remains only to trace the influence of the sacred taboo on economic concepts by showing its relation to particular notions of property. In this development we have to take into account not only the owner but the objects owned. The prevalent opinion is that personal property, such as weapons, ornaments, and implements, were the first objects of property. This is not necessarily the case.<sup>49</sup> As will be shown later, so far as Hebrew history is concerned, the contrary is true, that personal property grew out of property in human beings. Here the task is to show how property in persons, that is, slavery, grew out of the taboo.

As we have seen, the earliest conception of the "curse" revealed in our Hebrew sources was that all the enemy, young and old, were to be slain, as "devoted," or sacred to the deity, and therefore were taboo to men. With the growing Hebrew consciousness of one-ness with his tribal God, Yahweh, there developed as a result of the conflict with their enemies, the Canaanites, and later with their stronger and more dangerous enemies, the Syrians and the Assyrians, the feeling that they were representatives of Yahweh and could therefore themselves use some of these devoted persons. This feeling had a basis in their communion with Yahweh in partaking of part of the sacrifices, a Semitic practice which antedated Hebrew history by a long period. This feeling of sharing the devoted with Yahweh was helped along both by the practices of primitive magic and by some of the most fundamental instincts of man, some of them economic and others biological.

Primitive magic had led the victor to kill the enemy in order that his deity and ultimately himself as the representative of his god might obtain the valor of the slain enemy. But to the primitive consciousness the living enemy appeared to be an even more valuable trophy than the dead enemy. In the predatory life of the primitive horde the captive served to solve the food

<sup>49</sup> See Veblen, "The beginnings of ownership," *American Journal of Sociology*, Vol. 4, pp. 352-365. "It is difficult to see how an institution of ownership could have arisen in the early days of predatory life through the seizure of goods, but the case is different with the seizure of persons." P. 361.

problem. The male captive, however, was dangerous and therefore seldom spared. It was different with the female. If spared, at least temporarily she could supply another almost equally necessary demand in the captor, the satisfaction of the sex-impulse, and this without losing her food-providing capacity. She catered to the desire deeply rooted in human nature for novelty in sexual relations.<sup>50</sup> Moreover, if spared long, she could add future warriors to the horde. She was more submissive, less dangerous, eminently useful, and from all these considerations a much more valuable trophy than the slain enemy. Hence we conclude that the first object of property was woman taken in war.<sup>51</sup>

While in the earliest period all were slain for the reasons just noted, it soon came to be a practice to spare some of the "spoil." It is significant that it was not women in general but maidens who had "not known man by lying with him"<sup>52</sup> that were spared. Of a piece with this is the fact that the sacred harlots attached to the temples are never married women. Here, then, are the elements of the basis of property in persons: (1) the conception that all captives are sacred to the god of the conquerors; (2) the strengthening of the consciousness of kind between the deity and the votary; and (3) the recognition of the opportunity thus afforded to gratify impulse.

But why, it may be asked, was it the virgin rather than the matron in Hebrew history who was spared? Because of the influence of the taboo adapted to the sex relations. What was sacred to the deity was taboo to man. The mystery of reproduction gathered about it the mysterious awe of primitive peoples, and the sexual relation had in it something of the divine. It was easy for primitive man to adapt his conception of the divine right in certain men and things to the sex relations, especially when male jealousy developed by the patriarchal family inclined him strongly in that direction. What was sacred to one group of men was tabooed to another, and finally what was sacred to one man was tabooed to every other, except upon the exchange of a purchase price. Hence arose private property not merely in woman captives but in virgins.

<sup>50</sup> See Westermarck, *Origin and development of the moral ideas*, p. 371.

<sup>51</sup> The facts noted in Ch. 3 prove this conclusion.

<sup>52</sup> "But all of the woman-children, that have not known man by lying with him, keep alive for yourselves." Num. 31:18.

This right maintained itself unquestioned throughout the period, so that it is first in the P code that we find it implied that she who had been humbled could not be sold. Yet upon this practice we are forced to notice the effect of the taboo before we can talk of woman as the actual property of man. For where this is not present and where no marriage rite makes the captive woman taboo to some men in favor of others we have complete promiscuity which is the "sheer negation of marriage"<sup>53</sup> and of ownership as well.

With this sacred marriage taboo we have the ownership complete. For this taboo was placed only upon woman — man was, as we well know, absolutely free from any restriction on its account — branding her, figuratively speaking, as the property of one or more men to the exclusion of others. Such taboo placed upon the captive woman marks the first recognized property-right between man and man. She was more than trophy of the dead enemy; she was a distinct personality by herself, which could not by any magic be incorporated with the captor's personality, except by an abstract right of the taboo placed upon her which the community respected.

This taboo placed upon woman has its origin in the divine right to the captives. Its origin is prehistoric, yet we possess sufficiently clear survivals to prove the case. Even so late as in the P code the conception of Yahweh's right to the female captives is definite and concise. Out of thirty-two thousand virgin captives, "Yahweh's tribute was thirty and two persons."<sup>54</sup> Further we have the sacred prostitutes, *kedeshah*, literally, "consecrated" or "holy." This consecration or holiness is only an illustration of the consecration spoken of above for service at the sanctuary.<sup>55</sup> The word used to denote such a woman is the same word that expresses holiness, but what was the exact relation obtaining between the deity and such a woman we are unable to determine. Several instances of these survivals occur,<sup>56</sup> but beyond these we have the well-attested conviction of the direct

<sup>53</sup> "Where the marital relation becomes very loose we approach promiscuity, or the sheer negation of marriage, as between all who are not separated from each other by any taboo. If such taboo also fail we get complete promiscuity." Hobhouse, *Morals in evolution*, Vol. 1, p. 14.

<sup>54</sup> Num. 31:40.

<sup>55</sup> "Semitic temples were thronged with sacred prostitutes." Smith, *Religion of the Semites*, p. 455.

<sup>56</sup> Gen. 38:21-22; 1 Sam. 2:22; Num. 25:1-3; Hos. 4:14.

dependence of pregnancy upon the divine influence, and finally the divine right to the first-born, all of these things lending tremendous weight to the explicit reference to the sexual intercourse between the "sons of God and the daughters of men."<sup>57</sup> In general it is noteworthy that in our sources we have no condemnation of sexual immorality which does not violate a sacred taboo. It need scarcely be pointed out that the whole regulation of "forbidden degrees" of relation for intermarrying and the elaborate system of "cleanness and uncleanness" in the marital relation are distinct taboos, deriving their power from the divine will and the dread of divine punishment. Without these they would be meaningless.

Property-right in woman by means of the sacred taboo took place early, in the prehistoric society, for we know of no society where absolute promiscuity without any sexual taboo has at all existed. But so long as the nomadic life continued there were strict limitations even to this kind of property. It required the functional soil of economic production to give the impetus to the concept. When captive woman could be put to productive work, the beginnings of actual slavery sprang up. Then men and women alike became a valuable asset and were spared for the work that they could perform. We witness this in the victorious conquest of Palestine by the Hebrews. There was a change from the pastoral to the agricultural mode of life. This made profitable the system of slavery not only of women for procreative purposes, but of both sexes alike for agricultural work. Such is the real import of the C code, the first and chief part of which is the regulation of this property-right in Hebrew slaves.

Another element, however, is inevitable in a society of agricultural slavery. This is the armed power strong enough to quell uprisings. While we do not read of a revolt of Hebrew slaves, we have rather ample evidence of the revolts of the enslaved Canaanites. Militarism marked the development of the property-right in human beings. The popular leader at first was chosen directly by the deity, and this power gave him prestige. Warriors were at first the entire fighting strength of the tribe, but with the rise of serfdom society was divided in distinct classes and the cleavage of society began. The old patriarchal household with its small distinction between wife and concubine,

<sup>57</sup> Gen. 6:2.

child and slave, and its manorial mode of life which it was the aim of the armed power to protect and perpetuate soon felt the influence of the power it had created for its protection. The ownership of man on a large scale, at first practised on the basis of the divine sanction, gradually developed tendencies of antagonism to the patriarchal mode of life and to theocratic ideas. The kingship completed the breach. Military power by means of the ownership of men became a menace to the theocratic institutions. The institution of the kingdom meant the rejection of Yahweh.<sup>58</sup> A struggle began in which the military power only gradually made itself independent. The first kings were humbled again and again by the prophets. The institution of the right of ownership developed into the right of control by means of this property-right. This struggle marks the passing of the divine right of property into a human right. One of the most momentous changes in economic conditions which accompanied this change, was the rise of cities and of centers of population. Along with this and the subsequent expansion of industrial activity the ownership of men by means of the ownership of their subsistence entered society, and the idea of control by means of industrial slavery was developed. The dazzling reign of Solomon, who was capable of fusing the old and the new concepts together, marks a turning-point in the development of the property-concept in Israel. National glory blinds the nation for a moment to the hopeless chasm between the military nobility and the enslaved serfs. But under all this outward grandeur the population is being robbed by the aristocracy. Reaction comes against the boundless property-right assumed by the nobility. Commercial activity with the idea of profit finally brings its share to the enhancement of the institution of ownership, and then capping all, private ownership of Yahweh's land completes the institution of property among the Hebrews, and marks the climax of the development of the practice of the property-right.

But this development of the practice does not represent the actual development of the concept of property. We must face the element of the divine right, the survival of the origin of the property-right itself. For it is precisely in the indignant reaction of the eighth-century prophets against these very practices

<sup>58</sup> 1 Sam. 8:7.

of the private right of property that we find the actual concept of property revealed. The extreme function of private property lacks the essential element, the divine sanction. We may refuse to believe such a view as this, but, if we do we are forced to deny the facts. For so fundamental was this menace of unrestrained, unsanctioned practice of the private property-right that the downfall of the nation stands as a monumental ruin in history to testify to the destruction it wrought.

The ownership of Hebrew slaves recognized in the early code was gradually modified so that in the following D code woman enjoyed the limit of seven years servitude, as well as the man, if sold into bondage as a free woman. With the rise of a powerful nobility the military power prevented the capture of wives, and the price was paid which later developed into the *mohar*, or dowry. This naturally made a greater distinction between the chief wife and the concubines. Yet the growing national consciousness recognized the native individual, and to a certain extent broke down the property-right in Hebrew slaves. The right to the captive foreigner is as absolute as ever, and the prophets accord it unqualified divine sanction. But the agreement of the nobility in the reign of Zedekiah to liberate all the Hebrew slaves marks the change which was occurring in the property-concept of the time. Hitherto slaves had been the chief objects of ownership. With the development of consciousness of kind, however, that form of property had begun to fall into disrepute. Now a new social cleavage was beginning to appear, caused not by social differences at first but by economic changes. The people had become agricultural. Property in things had begun to come in as a substitute for human chattels. Thence came commercial pursuits and the changed concept of property which challenged the attention of those social conservatives, the prophets. The bulk of the nation was with them. The newly rich were the innovators and as such both they and their commercial practices call forth the fierce denunciation of the prophets. The control of the necessities of life, ownership of things as a control of man, has its strict limitations. Commercial activity for profit is looked upon with disdain as contemptible, and the private ownership of land is summarily condemned by the Hebrew prophets. This was the actual property-

concept, and the divergence between it and the practices is clearly seen to involve the original element of the right of ownership, divine right. This was the basis for the views of the prophets.

After the property-right was established in captives we can easily understand its extension to things. But, as noted above, it is undoubtedly false to believe the property-right in things prior to the right in persons.<sup>59</sup> Private property in the primitive horde is almost unthinkable, since it presumes a highly developed and clearly defined idea of the individual, and, more than this, an explicit right as operating between these individuals. In the absence of this it would involve speedy and inevitable extinction, since the horde, torn by the dissension which always follows private property, would prove a house divided against itself. When we know that association itself and the unity of concerted action is a result of the struggle for existence, this notion of an original property-right in personal belongings falls to the ground by its own weight. In the primitive horde the individual was merged in the group. The horde was the unit. The notion of personality was hazy and vague. Hence the view of personal belongings as being a part of the personality of the captor or user is undoubtedly the true one, when we remember that the question is of the concept of property — not its function.<sup>60</sup>

With this explanation we have a clue to the historical fact of horde-communism. If the group was the unit so that the individual, to all practical purposes, disappeared in it; so did also his personality and its appendages. For any thing to be "his" the individual had to be pitted against the whole, and we know what that meant in savage society, instant destruction. Another consideration of conclusive importance in regard to the priority of property in persons or things is that while we have an abundance of historical evidence for communism in things,<sup>61</sup> we know

<sup>59</sup> "The appropriation and accumulation of consumable goods could scarcely have come into vogue as a direct outgrowth of the primitive horde communism, but it comes in as an easy and unobtrusive consequence of the ownership of persons." Veblen, *American Journal of Sociology*, Vol. 4, p. 365.

<sup>60</sup> "It is a question as to the light in which the savage himself habitually views these objects that pertain immediately to his person and are set apart for his habitual use." *Ibid.*, p. 354.

<sup>61</sup> "It is commonplace to remark that among the lowest races most economic goods belong to the community as a whole. The individual has only a right of user which has not as yet passed into a recognized right of ownership." Webster, *American Journal of Sociology*, Vol. 15, p. 795.

of no society with absolute communism in women, that is, with complete promiscuity and a total absence of all sexual taboos.

The most valued of all personal possessions, the trophy, may have a different meaning from what we usually give it. In a state of society in which "life" is a mere annotation, and all its connotations or elements are bound up in the nebulous chaos of magic and mystery, lines of demarcation between men and things are not as clear as they are to-day. Might not the death-dealing weapon in the hand of the hero appear to the superstitious mind of the savage as a part of the hero himself? And may not this view obtain in regard to other things of daily use as well? In all probability things interred with the dead were interred with him because they were, to the minds of the survivors, an integral part of the dead man himself rather than his possession.<sup>62</sup> This would explain the trophy as a share obtained by the votary in the divine property-right. The weapon, as well as the teeth or the scalp, would be part of the enemy himself, and as a token of prowess or, more probably, of divine favor the warrior would possess the person rather than his belongings. This fellow-being himself would be delivered to the owner by magical power and be possessed by the divine right of the sacred taboo. In this way the "zone of influence of the individual's personality," the "quasi personal fringe" and the "penumbra of a person's individuality"<sup>63</sup> may be explained, and the hero would not only possess the others, but be considered to have increased his own personality by the powers of the other persons whom he had killed. This would be an "extension of personality," the reasonableness of which might be much more clear to the savage than the conception of corporate ownership is to many minds to-day. If this was the belief of primitive man, we have an explanation of the rise of personal property in weapons, ornaments, etc., in the fact that they had been connected with a person who was "devoted" and therefore belonged to his deity. That it was persons rather than things which constituted the first objects of the proprietary right we are fairly sure.

<sup>62</sup> "Weapons, tools, articles of ornament and clothing, are commonly regarded by early man as an integral part of the owner's personality; they are **HIM** almost as much as his bodily members." Webster, *American Journal of Sociology*, Vol. 15, p. 799.

<sup>63</sup> Veblen, "The Beginnings of Ownership," *American Journal of Sociology*, Vol. 4, p. 360.

We conclude that the property right in persons is the basis of the later property-right in things. That this right, like the ownership of persons, should be based upon the divine right of the sacred taboo may appear absurd; yet such is the testimony of facts. In the communism of the early group everything belonged to the group. As soon as the magic had advanced sufficiently to invest things with a supernatural mysterious power, these things became taboo. This is in fact the taboo as we know it, though we have failed to see its far-reaching importance. Then, when animism had proceeded far enough to render this magic the expression of a divine will, we have the holy things, which are tabooed to the people and set off from the common things by means of this universally respected divine right. In this early communism, therefore, we find the condition that "what is not taboo is common and in this antithesis lies the germ of the conception of property as applied to many persons and things. Thus taboo became in many cases merely an assertion of proprietary rights. . . Isolation was the first object of taboo and this was the first stage of ownership."<sup>64</sup> That this taboo in its last analysis involves the divine right is the best attested fact of our entire study of the Hebrew property-concept from Yahweh's right to the first-born among men and animals, his right to the captives and the spoil, through the entire list of objects, to its influence upon the view of wealth. This is, as we have seen, their only sanction and their compelling power. The curse derives its meaning from this fact. The case of Achan's breaking of this taboo illustrates the divine property-right to things,<sup>65</sup> and the curse uttered by Micah's mother shows this right exercised by man.<sup>66</sup> This condition, so striking in the social life of the Hebrews, is so because of the undeveloped state in which we find the concept among them. But it is seen to obtain everywhere, when investigated. "Throughout the lower culture we have abundant evidence that the private property of the living is frequently protected by the imposition of taboos."<sup>67</sup> Even the advocates of the old theories of a functional origin of the property concept realize this predominating influence of the taboo.

<sup>64</sup> *International Encyclopedia*, s. v. "Taboo."

<sup>65</sup> Josh. 7:1 ff.

<sup>66</sup> Judg. 17:1 ff.

<sup>67</sup> Webster, "The influence of superstition on the evolution of the property right." *American Journal of Sociology*, Vol. 15, p. 794.

"Among many rude peoples the statement that the property depends upon the user must be qualified by the exception that it may also be secured by taboo. Thus the legal conception of user may be reinforced by the magical idea of taboo as a basis of property."<sup>68</sup> Westermark, who traces the development of the property-idea by means of the legal conception of theft, fills ten pages with illustrations of this divine property-right as it has been discovered among the different primitive peoples.<sup>69</sup>

In early group life personal property played but a small part. Among the Hebrews it was chiefly "flocks and herds, silver and gold." "Men-servants and the maid-servants" were by far the most important. Yet with the ownership in persons established, the settlement in a fertile country with comparatively unlimited capacity for the productivity of slave labor, property in things soon acquired prominence. Moreover the military power protecting the right in persons also made personal property more safe. One of the best testimonies to the fact that the property-right in things became so prominent as to show its power in the control of men, we have in the complaint of the prophets of the eighth century concerning the corruption of the leaders. "The heads [of Zion] judge for reward, and the priests thereof teach for hire, and the prophets thereof divine for money."<sup>70</sup> With the rise of cities and industrial activity commercialism marks the culmination of the property-right in things by the well-attested idea of profit condemned by the prophet as plain stealing. Hence this function of the property-right was far from a right which had gained the popular sanction and cannot, therefore, be said to be an established conception of the property-right. The prophetic view of wealth proves this contention.

6. *Ownership in land, or real property, is the last item to come into the hands of the individual.*

Not a word of regulation as to the right of man against man is spoken in the early C code. Yet in the still earlier Covenant code we have the divine right to the land intimated. Consequently, any objection to the theory set forth in these pages that the divine right was a derivative from individual right falls to

<sup>68</sup> Hobhouse, *Morals in evolution*, p. 332.

<sup>69</sup> *The origin and development of the moral ideas*, Vol. 2, pp. 59-69.

<sup>70</sup> Mic. 3:11.

pieces. The fact is that the land of Canaan was conceived to be Yahweh's land, just as the land of Moab was conceded to Chemosh<sup>71</sup> not only by the Moabites but by the Hebrews as well.<sup>72</sup> Another fact is that this divine right maintained itself intact throughout our period with this modification that it was viewed as a divine control in favor of the common people. Private ownership of land was a robbery of Yahweh's land held in fief by the people.<sup>73</sup> Hence the popular belief of the fall of a dynasty as result of a violation of the family inheritance,<sup>74</sup> and the actual destruction of the nation by this unsanctioned practice of the Hebrew *latifundia*, the large landed estates privately owned.

That this property-right in land should have its origin in the sacred taboo does not surprise us, since we find that in this period the very practice of private property in land is unable to gain the necessary sanction, and common family ownership still obtains. The conception of the earliest home of man in the garden of Eden is a fact which can only be explained by the principle of divine ownership. An abundance of evidence meets us in our sources that places where theophanies occurred are considered as the dwelling places of the deity and therefore they are holy, or taboo.<sup>75</sup> At these places altars were erected, which we know were taboo in the very highest degree. Nothing could therefore be more logical than the idea that the land belonged directly to the deity. Other natural causes tended to confirm this view. The mysterious force of fertility seemed to prove it.<sup>76</sup> So also droughts, storms, and all agents of devastations were conceived as plagues sent by the owner of the land upon its inhabitants. Thus it came about that the first owner of land was not the man who was able to see the advantage of owning it and therefore persuaded his fellow men that the land he had fenced in was his, as Rousseau would have it, but the first owner

<sup>71</sup> See inscription on Mesha Stone. Hastings, *Bible Dictionary*, Vol. 3, p. 404.

<sup>72</sup> Judg. 11:23-24.

<sup>73</sup> Cp. McCurdy, *History, prophecy, and the Monuments*. Vol. 2, p. 201. "He as the head of the family was the tenant of the Owner of the soil."

<sup>74</sup> 1 Ki. 21:3.

<sup>75</sup> Gen. 22:2, 14; 12:7; 28:16-17; 31:48 ff.; 32:30; 35:7. See further Smith, *Religion of the Semites*, on the subject of "Holy Places."

<sup>76</sup> Cp. Smith, *Prophets of Israel*, who holds that even as late as in Hosea's time the conception of Yahweh as the *Baal*, "my lord," "owner" was a conception of the deity as a principle of physical fertility." Pp. 170-174.

of a piece of land was the priest representing the people at the altar of the deity. As he held this spot by the taboo which by common consent forbade popular use, so the clan or tribe gradually came to regard their habitat as especially sacred to their community, and the deity was expected to interfere in their behalf in case of danger to its own possession and the people's inheritance. This was as far as the proprietary right in land could advance in the pastoral stage, when communism perforce must rule. Only with increasing population in an environment of pastoral and agricultural activity combined could modification of the communistic occupation pass over into communal property with definite limits. Increasing agriculture caused an increased value of the land, and this necessitated more definite division of the groups to which a certain section belonged, and more precise boundaries. In Israel we know that at first the land was the common possession as a future home for all the tribes. Later there was a division according to the tribes individually, and then finally came the family inheritance which at the close of our period was the divinely sanctioned mode of ownership which was broken down by the powerful but unsanctioned and therefore wicked practice of private ownership.

#### *7. The concept of theft.*

Of the special concepts the rise and development of the notion of theft is the most important. This is but the negative side of the property-concept. It proves conclusively the difference between the function of property and the universal sanction or the proprietary right. The notion of theft in other words takes the function as it exists, but while it sanctions one practice it condemns another. The contention of this interpretation is that this sanction and not the practice constitutes the concept of property. Seizure, use, exchange and production are nothing more or less than the function, and could not *per se* create the notion of right, the negation of which is theft. Imitation and suggestion of the individual consciousness is inadequate to explain the facts of a generally accepted right. Consciousness of kind is absolutely essential. Imitation and suggestion influence action and function, but are as incapable of creating mental content in human society as they are in the society of animals.

This notion of theft goes further. In early society the only crimes recognized were the breaking of sacred customs. These customs were sacred because of man's belief in the supernatural. They were protected by universal sanction based upon the belief in a divine will. This was expressed by means of the taboo. The first act of theft therefore could only occur where a taboo was broken. And it could be theft only because the right violated was a sacred, that is, supernatural or divine right. It would be punished only in so far as the members of the group acted in unison in the belief that they were executing the divine will. The divine right plays the same part in the origin of the concept of property as the strong arm does in the origin of the function. Hence we can understand how Dr. Smith could labor so hard to rule out all ideas of property from the system of taboo and yet make this statement, which expresses the facts in a nutshell: "In the oldest types of societies impious acts or breaches of taboo are the only offences treated as crimes; e. g. there is no such crime as theft, but a man can save his property by placing it under taboo ,when it becomes an act of impiety to touch it."<sup>77</sup>

This explains how the same act is in one case a crime and in another case a merit. We noted this in the case of spoil. To spoil the enemies was a meritorious act, and the only case of stealing which was recognized as such was the appropriation of the tabooed thing and later the things used by a kinsman to which the community had a common right. The individual taboo was first placed on the captive woman, and thus the cornerstone of the home and marital fidelity sustains a very close relation to the institution of property.<sup>78</sup> From this taboo in slavery of women arose our individual property in human beings. This is the stage of the C code where we find that to steal a man meant death,<sup>79</sup> and to break the taboo protecting a father's property right in the daughter meant paying the price for her.<sup>80</sup> Alongside with property in human beings the taboo on things came into vogue as soon as their value became sufficiently important

<sup>77</sup> See p. 77 footnote.

<sup>78</sup> Cp. Sutherland, *Origin and growth of the moral instincts*, Ch. 9, "The Ideal of Chastity," pp. 190-232. See also Gen. 20:3 ff.; 26:10.

<sup>79</sup> Ex. 21:16.

<sup>80</sup> Ex. 22:16-17.

in social life and stealing of things upon which a neighbor, that is, a kinsman, has placed his taboo, is forbidden. Yet while this development takes place, the right to take spoil remains and is as justifiable in the estimation of the prophets as it was by the early Judges. It is only when the nobility begins to violate the ancient divine right to Yahweh's land and to eject Yahweh's people from it that the crime of spoil, or robbery, is recognized because it is perpetrated against Israel, and not against the "cursed" nations.

The notion of inheritance is, as we noticed, closely connected with the paternal blessing in the name of Yahweh. The divine right or sanction was eagerly sought, as the intrigues of nearly every one of the wives of the patriarch's in favor of the inheritance of the favorite son, abundantly proves.<sup>81</sup> In this paternal blessing we probably see one of the clearest cases of the union of the divine and the human property-right. The father was the owner of his household in the name of Yahweh, who was the real and actual owner.<sup>82</sup> For only thus could the religious formula of the blessing carry with it any meaning. Under the developing ideas of property as new situations arose through the complexity of social life the human right gained the ascendancy and the divine right had to be emphasized against the encroachment made by the aristocracy under military and regal power.

Such origin and development must lie at the basis of the change of view in the matter of material possessions which is seen in our sources. The function of property in human society springs from the elements of suggestion and imitation on the basis of the struggle for existence, but the concept of the right to own and possess springs from man's belief in magic and the supernatural, which has its basis in the consciousness of kind. This was what made the taboo sacred and unquestionably accepted and what constituted its binding force. The right of the deity could not be violated. Then the individual who could impose these taboos by devoting or cursing things in the name of the deity, or could make a vow, perforce must share in this right. Therefore great possessions and divine favor went hand in hand.

But this process had a limit. The right was used to the detri-

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<sup>81</sup> Gen. 21:10; 27:2 ff.; 1 Ki. 1:15 ff.

<sup>82</sup> Cp. Smith, *The prophets of Israel*, pp. 170-174.

ment of the worshippers so far that what had been a means of strength in the struggle for survival became a menace. The consciousness of kind has developed and the divine will is seen to have changed. The sanction which gave the practice its life as an institution was withdrawn. The negative side of the right of property developed. Theft was punished as an act of impiety when practiced between kinsmen. Finally the wholesale plundering of the masses of a nation by a certain class is seen as a spoiling of Yahweh's people. This class constitutes the enemies of Yahweh, and their wealth is a token of this hostility.

Thus a synthesis of the facts found in the analysis of the actual property concepts of the early Hebrews, shows the essential difference between the function of ownership and the idea of property. It establishes the fact that the first notions of the right of property were inseparably bound up with primitive magic and superstition in animistic traditions, so that the first "owner," whose right could command universal recognition and absolute respect was the deity of the tribe. The historical fact by means of which this right was expressed and its power exerted was the taboo. The basis for this development can be explained only by means of the "elementary, generic social fact,"<sup>83</sup> the "consciousness of kind," or "formal likemindedness," since an actual function of a divine ownership never could have been exercised and could only exist in the conscious likemindedness of the group.

In a society where men and gods were thought to be akin and to stand in close relation to one another with the divine right usually exercised by human agency, this right gradually came to be shared by man, chiefly by means of the act of "devoting," or tabooing to his deity the object over which control was desired. This was first directed against enemies for the purpose of destruction; later an individual taboo was placed upon the female captive, who, being spared for the purpose of satisfaction and service to the captor, became the first object of the human right of property through the sacred taboo.

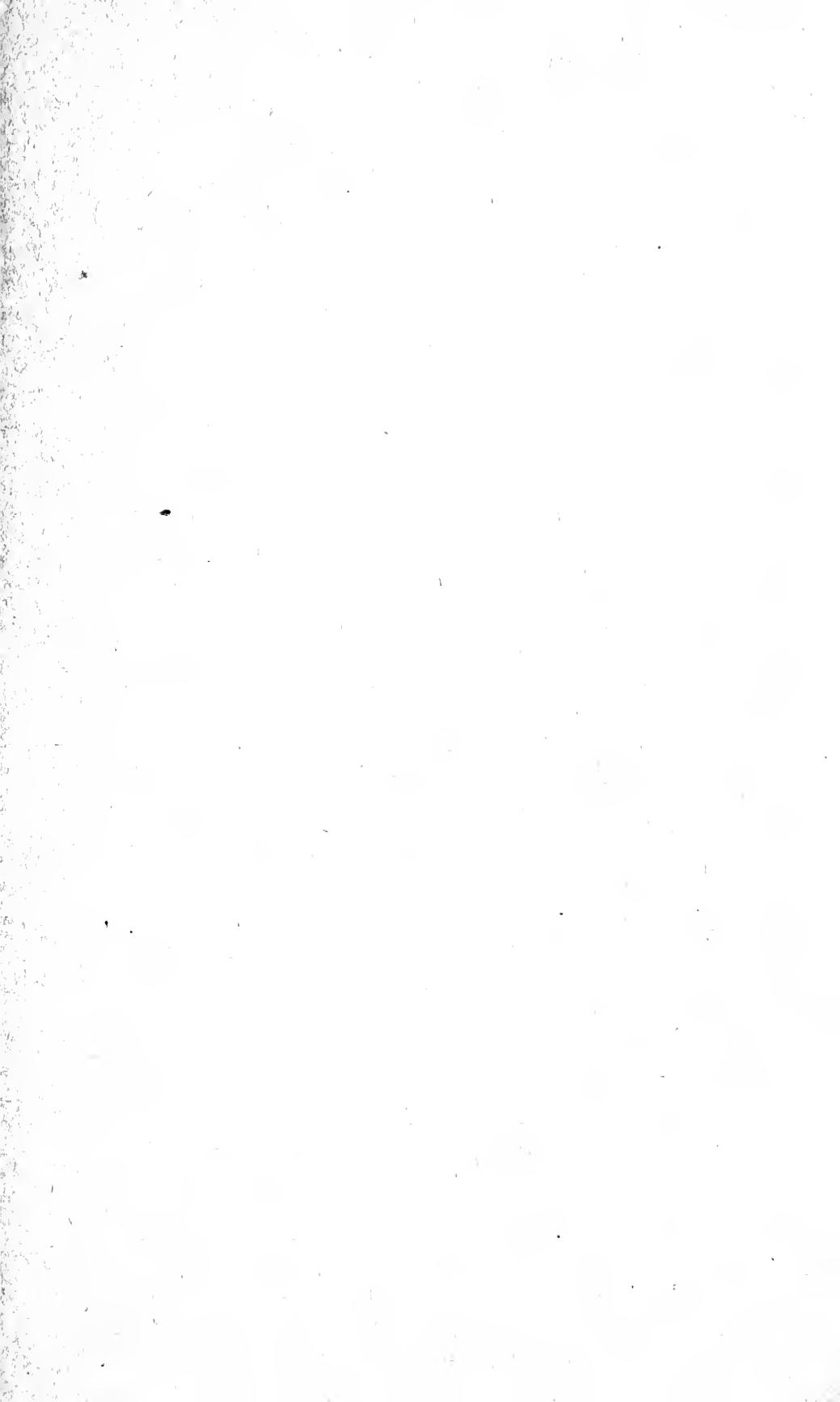
Personal belongings were thought to be an integral part of the owner's personality, and became objects of the property-right for the first time when the proprietary right in persons was fully developed, and the control of man by means of the own-

<sup>83</sup> Giddings, *Principles of Sociology*, p. 10, Preface.

ership of their subsistence came to be understood. This gave rise to commercial activity, which resulted in the idea of profit and the practice of private ownership of land, which, conflicting with the religious origin of the concept of property is opposed by the same social factor, "the consciousness of kind."







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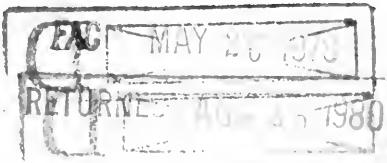


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